

## DOCTRINE OF 'NO FAULT': IN TORTIOUS LIABILITIES : A GENERAL STUDY

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### ABSTRACT

Basically, the liability of a person in tort arise from his negligence and therefore, where a person can prove that he was not negligent in doing his act, he is not held liable. In other words, if he can show that he was careful in doing the act which caused damage to the plaintiff, he can be exempted from liability. But there are situation when a person may be liable for some harm even though he is not negligent in causing the same, or there is no intention to cause the harm, or sometimes he may even have made some positive efforts to avert the same. In other words, some times the law recognizes "No Fault" liability.

**KEY WORDS**-Doctrine, No Fault, Tortious Liabilities

### INTRODUCTION

Generally a person shall not be liable for his act, if he has not a criminal intention or negligence at the time of doing the act. In England there is a cardinal principles of criminal law that there must be a "guilty mind" behind that act which is sought to be labeled as criminal without the mind of the person committing the act being guilty, the person is not guilty. The guilty intent and the act must both concur. This is expressed by the maxim "*actus non Facit reum, nisi mens sit rea*", i.e, the act by itself does not constitute guilt unless done with guilty intent. Mere absence of mind, however, is not "*mens rea*" or guilty mind. So, also the motive of the act is irrelevant while finding the guilty mind.

Although prima facie and as a general rule there must be a mind at fault before there can be crime. But it is not an inflexible rule, and a statute may relate to such a subject- matter and may be so framed as to make an act criminal whether there has been any intention to break the law or not. There is a large body of Municipal Law in the present day which is so conceived. Bye-laws are constantly made regulating the width of thoroughfares, the height of building, the thickness of walls, and the variety of other matters necessary for the general welfare, health, or convenience, and such bye-laws are enforced by the sanction of penalties, and the breach of them constitutes an offence and is a criminal matter without criminal intention or Negligence or fault or mistake. In such cases it

would generally speaking, be no answer to proceedings for infringement of the bye-law that the person committing it has bona fide made an accidental miscalculation or an erroneous measurement.

The acts are properly interpreted in a particular way as imposing the penalty when the act is done, no matter how innocently, and in such a case the statutory direction is obeyed, and that if he fails to do so he does it at peril.

There are, however, exceptional circumstances in which the law disregards "mens rea" altogether and holds a man responsible independently of any wrongful intention or culpable negligence, wrongs which are thus independent of *mens rea* are distinguished as wrongs of absolute liability. Thus, if a person brings or accumulates on his land anything which if it should escape, may cause damage to his neighbor, he does so at his peril.

If all the human activities were to be classified from the point of view of their social utility, they may broadly be placed in three main categories, namely

- (1) Those which are prohibited by law such as crime etc.
- (2) Activities which are not prohibited by law, that is, they are legally permissible.
- (3) There is yet another category of activities which the law could have prohibited but it has not done so because restricting them would have stumbled the social development and progress. For example the New Scientific inventions, experimentation which explosive, poisonous gas, dangerous structures, animals etc. Which require human adventure have substantially contributed to the progress of human civilization which, if, prohibited by law, would have made the social development impossible. Therefore Hazardous activities which involve considerable "risk" constitute a category in between the above stated two categories i.e, those prohibited by law and those not so prohibited. That is to say, a person may carry on these adventure oriented activities but he has to do so at his own risk and he shall be liable for all consequences flowing from such activities whether he did them carefully or negligently. Thus it will be seen that there are many hazardous activities which pose a danger to human life and property but despite that they are not prohibited by law because they are deemed inevitable for the progress and development of human society.<sup>1</sup>

### **Constructive Mens Rea**

Constructive mens rea means that any wrongdoer may be liable for his-her wrongful act without any criminal intention negligence or motive and without legal fault or mistake. Generally, the liability of a person in tort emanates from his negligence and therefore where a person can prove that he was not negligence in doing his act he is not held liable. In other words, if he can show that he was careful in doing the act which caused damage to the plaintiff, he can be exempted from liability. But this general principle of liability does not apply to cases which fall in the category of hazardous activities and a person is invariably held liable for all the consequences of such acts irrespective of the fact whether he was negligent or non-negligent (that is, careful) this has been called as "strict liability" which is an exception to the general principal of "liability for fault" in law of torts. In other

hands matter which is related to public order, public safety, health, convenience, decency and morality, environmental issues, hazardous and nuisance activity etc, are those issues where any person shall be liable for any act whether he was negligent or non negligent (that is careful) or wrongful intention.<sup>2</sup> These matter are called No Fault principle, and a person shall be liable without Fault or mistake, following are some examples when any person shall be liable under no fault principle.

**Strict and Absolute liability:-** The principle of strict responsibility for hazardous and inherently dangerous activities was for the first time laid down by Blackburn J. in Ryland V. Fletcher and therefore, it is also known as **Ryland V. Fletcher**<sup>3</sup> rule, in this case the court of exchequer chamber had observed that "The person who for his own purpose brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his Peril, and if he does not do so is prima fascia answerable for all the damage which is the natural consequences of its escape.

The essence of the rule is that if a person who brings or keeps or collects any thing on his land which is likely to escape and if it does escape and cause damage to others must do it at his own peril and he would be liable for all the resultant consequences of escape of such thing, these escapable things may include fire, gas, vapours, noise, smoke, petrol, electric current, explosives, dangerous animals, water etc. Any amount of carefulness on his part is not going to save him from liability where his activity falls within the description of Ryland V. Fletcher rule. Since liability arises even without fault or negligence on the part of the defendant, the rule has also been called the principle of strict liability.

The principle of strict liability is generally applicable to cases falling under any of the following heads:-

1. Activities involving non-natural user of land due to collection and escape of any thing from other land.
2. Activities involving dangerous operation or construction such as blasting, mining etc.
3. Liability arising out of keeping or taming dangerous animals.
4. Liability arising out of Keeping dangerous places or premises.
5. Liability for dangerous structures e.g. building ship, rail etc.
6. Liability for dangerous chattels such as crackers, explosives, petrol etc.

It must, however be stated that Ryland v. Fletcher rule is also known as the strict liability or absolute liability rule but according to Dr. Winfield it would not be correct or call it a rule of absolute liability because there are several exceptions where in the rule does not apply where as the term "absolute" implies something which does not have any exception. There are some exception of this rule of strict liability.

1. This rule does not apply where damages caused due to natural user.
2. Where damages occurred by the consent of plaintiff itself.
3. Where the damages is caused, due to plaintiff's own default.

4. Where the damages is caused due to wrongful act of third party or a stranger over whom the defendant had no control, the defendant will not be liable.
5. The principle of strict liability does not apply for the damage caused due to acts which are irresistible and beyond human contemplation and caused due to operation of some superior force which is beyond human control.
6. Where the act or escape which causes damage was for the common benefit of the plaintiff and the defendant, the defendant will not be held liable for it.
- 7- This rule does not apply in case of acts done and escape caused in exercise of statutory authority.

### **Modification of strict liability principle in Absolute liability**

In this rule of strict liability, the "liability" is strict not absolute under this rule a person can be alibi by some exceptions. But in the case of Absolute liability, there is no exception and liability shall be Impose under no fault or non mistake principle.

The rule in Ryland v. Fletcher was laid down in the nineteenth century in the background of the then existing norms of the English society. There has been a tremendous change in the living pattern of human society all over the world due to rapid progress of science and technology during the preceding 150 years. Scientific inventions and industrialization have undoubtedly proved a boon to the overall development of human society, but at the same time made the life more complex and complicated. In the present millennium of progressive industrial society, the rule of strict liability seems to have lost its credence in resolving the disputes and claims of the parties. The supreme court of India in **M.C. Mehta v. Union of India**<sup>4</sup> expressed concern about the weakening effect of the strict liability rule and emphasized the need for its modification to make it more effective and relevant to the needs of the time. The rule may be modified as follows.

The modified version of the strict liability rule should transform this liability into absolute liability and the rule in this regard should be that if industry or enterprise which is engaged in some inherently dangerous activity causes harm or damage to someone during the operation of its activities. It should be held absolutely liable to compensate the aggrieved parties and such liability should be without any exceptions. The effect of this modification in the rule of Ryland v. Fletcher will be that where an enterprise is authorized to undertake an apparently dangerous or hazardous activity by an statute, the presumption of law would be that the said enterprise or undertaking shall be absolutely liable for all the possible consequences and damages resulting there from. Besides it should be Mandatory for such industries to provide adequate safety arrangements to avoid the possible accidents or dangers from their activities.

The proposed modification in the strict liability rule would have its impact on the quantum and nature of damages which are payable to the claimants. In the existing rule the nature of damages is compensatory where as in case of absolute liability (that is strict liability without any exceptions)

the nature of damages will be exemplary<sup>5</sup>. The Apex court awarded exemplary damages to the claimants of the Bhopal MIC Gas Tragedy<sup>6</sup> holding the Union Carbide company absolutely liable for this biggest 20<sup>th</sup> century industrial disaster.

### **Public liability Insurance Act 1991**

The public liability Act, 1991 is an important legislative enactment as regards the award of compensation to victims of dangerous and hazardous substances carried out by the industrial enterprises. The schedule appended to the Act provides compensation to victim despite there being no fault or negligence on the part of industry or enterprise<sup>7</sup>. The term "dangerous substance" as defined in section 2 (d) means the substances which is treated as dangerous and hazardous under the Environment Act 1986. The Act further makes provision for prompt payment of compensation to the victims of accident or hazardous operation by the entrepreneurs.

### **Motor Vehicles Act, 1988**

Sec 140 (1) of the motor vehicles act provides that where the death or permanent disablement of any person results from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or the case may be, the owner of the vehicles shall be jointly and severally be liable to pay compensation in respect of such death or disablement according to the provisions of this act. Section 140 creates a new liability which is called a liability without fault this new rule of no-fault liability has been included in the act on the recommendation of the law commission. A new chapter VII-A (Now in section 140) providing for payment of compensation in certain cases of accidents without proof on fault or negligence of the part of the owner or the driver of the motor vehicle is being inserted in the Act. Section 140 to 144 correspond to section 92-A to 92-F of the old act which provided for liability without fault. The Supreme Court has suggest<sup>8</sup> that the compensation amount payable under section 92-A of the old Act for no- fault liability be enhanced. According section 140 (now) provides of a payment of Rs 50,000 in case of death and Rs 25,000 in case of permanent disablement as compensation.

### **The National Environment Tribunal Act, 1995**

This act provides liability to pay compensation in certain cases on principle of No fault. It is provided in the Act that where due to an accident, death, or injury to any person (other than work man) or damage to any property or environment has taken place, the owner shall be liable to pay compensation for such death, injury or damage under all or any of the following heads-

I- Death.

II-Permanent, temporary, total or partial disability or permanent or temporary disability or other injury or sickness.

III-Loss of wages due to total or partial disability or permanent or temporary disability.

IV-Medical expenses incurred for treatment of injuries or sickness.

V-Damage of private property.

VI-Expenses incurred by Government or any local authority in providing relief, and rehabilitation to the affected person.

VII-Loss to Government or local authority arising out of, or connected with the activity causing any damages.

VIII-Claims on account of any harm, damage or destruction to the fauna including milk and drought animals and aquatic fauna.

IX-Claims on account of any harm damage or destruction to the flora including, crops, vegetables, trees and or chards.

X-Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land eco-system.

XI-Loss and destruction of any property other than private property.

XII-Loss of business or employment or both.

XIII-Any other claim arising out or concerned with any activity or handling hazardous substances<sup>9</sup>. Since liability to pay compensation is based on the principle of no fault, the claimant shall not be required to plead and establish the wrongful act, neglect or default of any person, if the death, injury or damage cannot be attributed to any individual activity but is the combined result of several activities, the tribunal may divide the liability for compensation amongst those responsible for such activities on an equitable basis the liability to pay is also based on the polluter pay principle.

**Information Technology Act 2000:-** According to section 66, of this Act, any person who collect or disseminate and circulate or disclosed the obscene literature ect. Through world wide website (www) knowingly or otherwise shall be punished with imprisonment up to Two years with fine of Rs. 2 lakh and if such crime committed again the term of imprisonment shall be Ten years. Whoever commits haking shall be punished with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

**Indian Penal Code 1860:-** There are some provisions of this code, where any wrongdoer shall be liable under “No Fault” principle without “Mens rea” i.e., Negligence, or guilty mind. For example section 228-A prohibits the disclosure of identity of the victim of certain offences, etc. On the ground of decency and morality or in dignity of human being which is conferred by our constitution also. Suppose any person disclosed the information which is related to section 228-A of this law, by knowing or otherwise i.e, Good faith or with out malicious conduct shall be liable for such crime. According this section- whoever prints or publishes the name or any matter which may make known the identity of the person against whom an offence under section 376, section 376-A, section 376-B, section 376-C or section 376-D is alleged or found to have been committed (hereinafter in this

section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to Two years and shall also be liable to fine.

Section 292-294 of Indian penal code deals with public morals and decency. Breach of these provisions any person shall be liable under no fault principle.

In **Ranjit v. state of Maharashtra**<sup>10</sup> the appellant was convicted under section 292, Indian penal code, by the high court for selling an obscene book titled Lady Chatterley's lover the sale of which was banned by the Government of India. The appellant contended before the Supreme Court that Mens rea of the accused had always to be proved to maintain conviction under criminal law since the prosecution had failed to prove Mens rea, that is to say, that the appellant sold or kept for selling the obscene book with the knowledge that the book was obscene, the conviction was unjustified. He further argued that there are such a large number of books these days in book stalls and their contents so different from each other that a book seller cannot, therefore, be convicted in the absence of the guilty mind. The Supreme Court held that knowledge of obscenity was not 292, Indian penal code, the section is plain and its meaning unambiguous. So only store, sells, lets to hire or keep in possession of any obscene book is sufficient for conviction. There is no requirement to prove the doctrine of Mens res, i.e, guilty mind or criminal intention. In **Alamgir v. State of Bihar**<sup>11</sup> the appellant was charged under section 498, Indian penal code, the facts of this case was that, the married woman was living with the appellant voluntarily. The question was whether he was detaining her, the appellant argued that he was not an accused because he had not entices to her, to go to away, not he conceals or detains to her, because she was living voluntarily with him.

The Supreme Court held that though the word detains generally means detention against will, this meaning cannot be attributed to the word here because the expression should be construed in the light of other words in its company. The word detains, therefore, should mean detention without the consent of the husband. Section 498 protects the rights of a husband who has been deprived of the company of his wife and in the light of this object also the expression detains, must mean keeping a woman without the permission of her husband, the woman's consent this provision is therefore meaningless. So accused is liable under section 498 whether he was not a criminal intention because matter which is related to public morality and decency or safety "No Fault" principle shall prevail.

**Environmental Degradation and No Fault Principle-** Industrial activities involving hazardous substances are resulting into more and more accidents causing damage to person and property, to the people in general and workers in particular. The position in most of cases is that hazardous industrial units which cause the accident do not immediately provide only relief or compensation to the victims, even though they are financially in sound position.

The principle of “absolute liability” in accident cases involving hazardous substances has been laid down by the Supreme Court in *M.C. Mehta v. Union of India* (popularly known as *Oilium Gas leak case*). In this leading case the Supreme Court has observed that an enterprise which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in the surrounding areas owes an “absolute and non-delegable duty” to the community to ensure that no harm results to any one on account of such activity, if any harm results on account of such activity, the enterprise must be “absolutely liable to compensate” for such harm and it should be no answer for the enterprise to say that it had taken all reasonable care and that harm occurred without any negligence on its part. Absolute liability, thus, means no-fault liability. This principle had been applied later on in various environmental cases..

### CONCLUSION

The Observation of cited above we can say that, the liability of a person in torts emanates generally from his negligence, and therefore where a person can prove that he was not negligent in doing his act he is not liable. But this general principle of liability does not apply to cases which fall in the category of hazardous activities and matters which is related to public order such as public health, safety, decency and morality, convenience and many others, a person is invariably held liable for all the consequences of such acts irrespective of the fact, whether he was negligent or non-negligent, i.e., careful, this has been called as No Fault liability.

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