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Critical Analysis of the Concept of Foreseeability in Torts of Negligence

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ABSTRACT

The term "Foreseeability" refers to the idea that the defendant should have been able to foresee that its conduct or inaction would have a specific result. Foreseeability comes under negligence in the law of Torts. This study places a focus on the negligent acts that arise as a result of a violation of duty and a breach of the rights of others in an international context. This is done since tort law is the primary legal framework in many areas of the world. The breadth of this issue has a focus on various foreign cases as precedent, which provides us with information on the foreseeability of potential risks that may be generated by carelessness. It highlights the many types of responsibilities for such breaches of duty and care, as well as breaches of rights directly or indirectly in accordance with the rules of foreseeability that apply to a variety of scenarios. The purpose of this study is to acquire a comprehensive grasp of the essentials of negligence and tort law, as well as to broaden one's knowledge of the concepts of foreseeability. This study is based mostly on doctrinal research, which entails looking at precedent cases, journals, books, and websites that have been verified as legitimate. The fundamentals of negligence are quite significant when it comes to doing the same act. This paper also talks about Medical Negligence. There have been occasions when most inept, unwell, or undereducated physicians have preyed on innocent patients.

To commit the tort of carelessness, all three elements must be met, and they must all be met at the same time. Furthermore, the fundamentals of each necessary, namely the presence of duty of care, violation of the duty of care, and subsequent injury, are critical.

Keywords: *Foreseeability, Negligence, Tort, Medical Negligence, Damages.*

I. INTRODUCTION

In this paper, the creators talk about the idea of a tort, law of torts is a system of laws, which enables a person who has suffered ham or injury by the act of another, to claim damages in a civil suit. A tort must include two out of the following three elements: a wrongdoing act or omission and a legal necessity. The act must result in actual legal harm. The harm must be of the kind requires a legal remedy, such as a claim for damages.

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As a result of failing to act in a manner that a sensible and reasonable person would, or by acting in a manner that such a person would not, under the circumstances, carelessness results in a breach of a duty called negligence. The concept known as "foreseeability" refers to the idea that then defendant should have been able to foresee that its conduct or inaction would have a specific result.

II. RELATED CASE LAWS

In Glasgow corp v muir,1943 [2]The defendants, Glasgow corp, were the proprietors of a historic home in Glasgow's s king's park. Within the structure were tea rooms and a candy store. The mansion's management granted the party of picnicker's permission to have their tea there one rainy day. They brought a tea urn of their own. One of the people carrying the tea urn spilled his portion of it mysteriously while trying to maneuver it through the small opening and inside the building. As a result, the boiling tea spewed everywhere and burned the kids who were waiting to purchase sweets from the shop as they were standing defendants in the cramped corridor. The lawsuit was filed on behalf of the affected kids to hold the employee.

The court determined that the managing lady had a broad duty of care to everyone in the tearoom. She did not, however, owe a Sunday school a duty of care to take further efforts to prevent them getting hurt as a result of her permitting them to enter. She was not needed to go above and above to prevent the tragedy from happening as long as the tearoom was operated in the same way it was on a daily basis and to the same safety standards. It was not reasonable foreseeability that permitting the kids on the property would lead to one of them getting burned. Therefore, the situation was classified as an accident that could not have been avoided.

(A) Literature review

1. Medical Negligence, 1962 [3]

- In this article the author talks about the Medical Negligence, Patient's view of the patient's charter, Doctors and Desert storm.
- According to Richard Smith, the Department of Health's planned system of voluntary arbitration should not be used in situations of medical malpractice, and Smith advocates for a no-fault system instead. 1 Further, he suggests a plan to lessen the occurrence of unfortunate incidents in the healthcare setting. Both

[2] [2]Glasgow Corp v Muir [1943] A.C. 448

[3] Rosen, Michael. "Medical Negligence." *BMJ: British Medical Journal*, vol. 304, no. 6826, 1992, pp. 576–576. *JSTOR*, http://www.jstor.org/stable/29714729. ,ISSN - 02670623 (Accessed 15 Oct. 2022.)

are crucial, but they are not always connected or on the same level.

2. The Standard of Care in Medical Negligence Cases, 1983 [4]

- In this article, The Author talks about Duty of Care and Causation, The nature and Characteristics of the standard of care, Policy Considerations, Factors in Assessment of Standard of Care, Proof of the Standard of Care, Specific Instances of the General duty And Standard of Care.
- In sum, a doctor has a responsibility to adhere to the guidelines and best practices that have been outlined here. yet, it must be stressed that the law is not a guarantee nor a guarantor of success.

3. Negligence, 1915[5]

- Negligence is often characterized as a violation of duty.
- Negligence implies an inflicting harm. Due attention avoids the danger. Negligence is behavior, not a state of mind. Most commonly, it's produced by carelessness or heedlessness.
- These factors may affect a risk's reasonableness: (I) Danger severity. Larger dangers tend to be unrealistic. (2) The primary goal is what is at risk and what the legislation attempts to protect. Reasonableness is a risk's relevance to the main aim. (3) A person who risks injuring the primary thing usually does it for personal motives.
- A prima facie presumption that he has such information exists as to the actor, which he may, if he can, overcome by proof of his ignorance, but it is held that the situations of the jury and the actor are not comparable.

a. Books

1. Avtar Singh And Harpreet Kaur, 2013, Introduction to the Law of Torts And Consumer Protection [6]

- The judicial committee of the privy council has ruled that the decision in RE

[4] Heong, Stanley Yeo Meng. "THE STANDARD OF CARE IN MEDICAL NEGLIGENCE CASES." *Malaya Law Review*, vol. 25, no. 1, 1983, pp. 30–49. *JSTOR*, http://www.jstor.org/stable/24863889. ISSN - 0542335X (Accessed 15 Oct. 2022.)

[5] Terry, Henry T. "Negligence." *Harvard Law Review*, vol. 29, no. 1, 1915, pp. 40–54. *JSTOR*, https://doi.org/10.2307/1325735. ISSN - 0017811X.(Accessed 15 Oct. 2022.)

[6] Avtar Singh And Harpreet Kaur, 2013, Introduction to the Law of Torts and Consumer Protection, Published by Lexis Nexis, 3rd Edition, ISBN- 9788180388446.

POLEMIS should no longer be regarded as sound precedent and that the standard for determining who is responsible for the results of a negligent act is whether the damage is of the kind that a reasonable person should have been able to predict.

- The presence of a direct or natural result of a negligent conduct is not necessary for sresponsibility to exist. Even when the recognized source of risk acted in an unforeseeable manner, the defendant will still be held accountable if the injury might have been anticipated in a broad sense.
- The actual harm that was sustained need not have been anticipated, but the defendant is not responsible if the harm was an entirely unexpected danger rather than a variation of the risk. The question of the size or magnitude of the harm, on the other hand, is irrelevant if the damage is of the form or character that may be anticipated; the defendant is still response

2. Ratanlal & Dhirajlal, 2019, The Law of Torts[7]

- The defendant is responsible for all direct effects of the plaintiff's torts, regardless of whether a reasonable person would have predicted them, according to the opposing viewpoint, which holds that instructions is the proper criteria. The test of predictability now dominates the field, but in order to fully comprehend the differences between the viewpoints, it is more practical to first consider how the test of directions is impactor matter if he is a model guy or not, every man must behave accordingly. In the unlikely event that he is not such a guy, he has exercised every reasonable measure of caution and deliberation. There is an exemption to this rule in the event of contributory negligence for atypical people, such as children and those who are mentally ill. They merely need to use the best judgement they are capable of; they are not compelled to behave like a typical mal
- Two opposing theories were proposed as establishing the criteria for remoteness in the middle of the 19th century. Foreseeability, in one perspective, serves as a measure of distance. In other words, from this perspective, outcomes that a reasonable person would not have predicted are too far off.
- The defendant is responsible for all direct effects of the plaintiff's torts, regardless of whether a reasonable person would have predicted them, according to the opposing viewpoint, which holds that instructions is the proper criteria. The test

[7] Ratanlal & Dhirajlal, 2019, The law of torts, Published by Lexis Nexis, 28th Edition, ISBN- 9789388548410.

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of predictability now dominates the field, but in order to fully comprehend the differences between the viewpoints, it is more practical to first consider how the test of directions is impacted.

3. A K. Jain, 2016, Law of Torts[8]

- Whether or not the defendant owes the plaintiff a duty depends on how foreseeably the plaintiff's harm may have been. In other words, the responsibility to exercise care starts the moment there is a plausible chance that the defendant's actions might put someone in risk. In Heaven v Pender, the court decided that the responsibility arises only when a person is close to the person or property of another.

(B) Statement of problem

In my research paper, I discussed the different types of serious problems that could eventually result in the whether a person could or should reasonably have foreseen the harms that resulted from their actions. I did so with the assistance of cases that will support this research paper. Additionally, I will include suggestions for which will help to reduce this problem, which will help both the principle and the agent, as well as the society.

(C) Rationale of study

This research paper's main purpose is to investigate what negligence is, what foreseeability is what reasonable foreseeability test is, for what purpose reasonable foreseeability used for, how reasonable foreseeability test used, what is medical negligence is. I will be looking for help with the cases that will be utilized to support my research paper and the numerous reasons to close the agency.

(D) Research objective

1. To study what foreseeability means in tort of negligence.
2. To understand what are the essentials of negligence.
3. To understand what medical negligence means.
4. To highlight cases of law related to negligence.

(E) Research question

1. What do you mean by foreseeability in torts of negligence?

[8] AK. Jain, 2016, Law of Torts, Published by- Delhi, Ascent Publications, 8th Edition, ISBN- 9788193555606

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2. What are the essentials of negligence?
3. What do you mean by medical negligence?

(F) Research methodology

I have opted Specifically, doctrinal, analytical, and comparative research methods would be used to carry it out. The law of Torts, Executive Orders, Judicial Precedents, and the Report of Various Committees serve as the primary sources of information for this study. Books, journals, scholarly articles, online journals, research reports, and other published materials served as secondary sources which has helped me during my research work.

III. MEANING, NATURE AND SCOPE OF FORESEEABILITY IN TORTS OF NEGLIGENCE

(A) Meaning and Nature of negligence

Negligence in general is the breach of a duty caused by omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. An action for negligence proceeds upon the idea of an obligation or duty on the part of the defendant to use care, and a breach of it to the plaintiff's injury.

Nature of negligence: Failure to exert the necessary level of care to prevent harm to others is referred to as negligence. The motorist may be held liable for carelessness, for instance, if he or she causes a car accident while driving recklessly.

(B) Medical Negligence

Medical negligence is defined as an action or inaction by a healthcare professional that departs from generally accepted norms of care and injuries the patient.

When a patient consults a doctor, the doctor owes him a number of obligations, including a duty of care in determining whether to take the case, a duty of care in selecting what treatment to administer, and a duty of care in the administration of that treatment. Any duty violation gives the patient the right to sue for negligence (Phillips India Ltd. V Kunju Punnu AIR 1975 Bom 306)[9]

(C) Bolam Test

The Bolam Test was initially used after the 1957 case of Bolam against Friern Hospital Management Committee. The case included an event at the hospital in which the patient, Mr.

[9] Phillips India Ltd. V Kunju Punnu AIR (1975) Bom 306

Bolam, got Electro Convulsive Therapy (ECT), which resulted in significant fractures.

Bolam tests a standard for evaluating medical negligence that was developed from English tort law. According to Bolam, a doctor and patient have a legal responsibility of care, but the appropriate level of care is a matter of medical judgement.

a. Bolam v Friern Hospital Management Committee, 1957[10]

- Facts

In this case, Bolam, the Plaintiff, was admitted to Friern Hospital. He was suffering from depression-related mental illness. A consultant psychiatrist from Friern Hospital examined him. He advised the plaintiff to undergo electro-convulsive therapy, but he did not warn her that this treatment carries a risk of fracture. Electro-convulsive therapy is performed by placing electrodes on the head that allow an electric current to pass through the brain from a machine. The plaintiff consented to the treatment by signing a paper. On his second treatment, the plaintiff suffered severe physical injuries at included a dislocation of both hip joints as well as fractures of the pelvis on each side caused by the head of the femur on each side being driven through the acetabulum or cup on the pelvis. The claimant filed a lawsuit against the defendant, alleging that the doctor was negligent in not restraining them or administering the drug.

- Judgement

At the first instance, McNair J. commented that expert witnesses had confirmed that the use of relaxant medications was generally opposed by medical opinion and that physical restraints may sometimes increase the danger of fracture. Moreover, it was common practise in the profession not to warn patients about the risk of treatment (even if it was low) unless expressly asked. He thought that the quality of care required was intimately tied to what was usual practice in a certain profession. When a person fails to do what a reasonable person would do given the circumstances, he falls below the required standard and is negligent. However, when someone claims to be a professional, such as a doctor, the standard of care must be higher. "It's only an issue of expression," McNair J said.

The judgement in this case favored the defendant hospital. Given the overall medical consensus on what was considered appropriate electro-shock technique, they had not been irresponsible in their therapy delivery.

(D) Bolitoh Test

The Bolitho Test, which arose from the 1996 court decision of Bolitho v City of Hackney HA,

[10] Bolam v Friern Hospital Management Committee, (1957), 1 WLR 583

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is a revision to the Bolam Test, one of the most significant medical negligence judgements.

The Bolam Test, established in 1957, stated that no doctor may be judged negligent if they behave "in line with a responsible body of medical opinion." The Bolitho Test clarified what was meant by "a responsible body," describing it as one whose view had a "logical foundation."

The Bolam Test and the Bolitho Test are the twin cornerstones of all medical negligence evaluations. They declare that a doctor is not negligent if he or she acts in conformity with a responsible body of medical opinion, as long as the Court considers such a view rational.

a. Bolitoh v City and Hackney HA, 1996[11]

- Facts

In this case, Bolitoh, the Plaintiff, two years old was brought to the hospital because he was having trouble breathing. The on-duty physician was asked to assist with the child's aberrant breathing patterns after the request was made. The doctor's bleep was suffering from low battery, so she was unable to accept the "call." Because of this, the youngster did not survive. The mother of the Plaintiff filed a lawsuit against the doctor for negligence, stating that her son required intubation but the doctor was not there to do it.

- Judgement

Even if she had been there, the doctor maintained she would not intubate the youngster. The House of Lords ruled that the defendant (doctor) could not claim that her failure to appear caused no injury. Because, even if she did attend, she may have violated her duties by not intubating a kid. The House of Lords determined that it was essential to determine whether the doctor would have been in breach of duty if she had attended but did not intubate the kid

IV. JUDICIAL PRECEDENTS

1. Bourhill v Young, 1943[12]

- Facts

The motorcyclist was killed in the crash because of his careless driving. Mrs. Bourhill, the appellant, was a fishwife who was emptying her basket from a platform approximately 45 feet distant from the place of impact when the tragedy occurred. Despite not witnessing the tragedy, the loudness of the impact caused a significant nervous shock. As a result, she was unable to go on with her company. Furthermore, the appellant was 8 months pregnant at the time of the

[11] Bolitoh v City of Hackney HA (1996),
[12] Bourhill v Young (1943) A.C. 92

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occurrence, and the injuries she sustained resulted in her child's stillbirth after a month.

- Issues

Did the biker have a duty of care to the appellant?

Was he accountable for negligence?

- Judgement

An appeal to the House of Lords was denied. The House determined in Bourhill v. Young that the motorcyclist did have a responsibility to the public driveway's other users to exercise reasonable care and avoid injuring others, including the appellant who had been struck by the motorcycle. Nonetheless, the court concluded that the defendant did not breach any duty of care due to Mrs. Bourhill since the appellant was not in the area where the possible hazards would have occurred as a result of the defendant's reckless driving at the time of the accident.

2. Haley v London Electricity Board, 1965[13]

- Facts

The defendants were digging a tunnel 60 feet long beside the pavement. They had placed a punner hammer and other warning signs to notify passersby of the ongoing construction. However, the claimant, a blind guy, was unable to read the signs and missed the hummer with his stick. As a consequence, he stumbled and was hurt by punner hummer. As a result, he filed a negligence lawsuit against the corporation.

- Issue

Was the possibility of damage foreseen?

Did the defendants fail to fulfil their responsibilities?

- Judgement

The House of Lords ruled in Haley v London Electricity Board that the accused did breach their duties. The House determined that additional attention and measures should have been taken. It was general known and relatively predictable that blind persons walked alone on the sidewalk with just their walking stick.

3. Bolton v Stone, 1951[14]

- Facts

[13] Haley v London Electricity Board (1965), A.C. 778
[14] Bolton v Stone (1951) A.C. 778

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Miss Stone, the plaintiff, was standing on a roadway outside her home when she was hurt by a ball struck by a player at a cricket stadium. The ground was surrounded by a seven-foot-high fence, and the player who struck the ball was roughly 100 yards distant from where the injury happened. Furthermore, there was evidence indicating, although the ball had struck over the fence on extremely rare occasions in the past, this specific shot was unusual.

Miss Stone filed a negligence claim against the club and its members.

- Issue

Was it reasonably foreseeable, given many years of experience, that the strike would damage someone standing that far away?

- Judgement

The court applies the negligence approach in its decision, siding with the defendant. The court decided that Defendant used reasonable care to stop the accident from happening to Plaintiff while using its negligence premise. Despite the said event that occurred to the plaintiff, the defendant is not at fault.

4. State of Haryana and other v. Smt. Santra, 2000[15]

- Facts

Smt. Santra, a poor laborer lady with seven children, underwent sterilization via a state-run programmed to prevent having another kid. Smt. Santra was given a certificate signed by approved government medical personnel after the sterilization and was informed that the treatment had been effective and she would not get pregnant again. She later fell pregnant and gave birth to a daughter. When she first went to the hospital, she was informed she wasn't pregnant. When the pregnancy was discovered, she was informed that the sterilization operation had failed. The surgery had only been performed on one fallopian tube, leaving the other unaltered. Smt. Santra asked for an abortion, but was informed it would endanger her life. Smt. Santra filed a civil suit for two lakh rupees (about $3,000 USD) in damages, asserting medical malpractice.

- Judgement

The district court and the lower appellate court both determined that the treatment conducted was incomplete, proving the doctor's carelessness, and ordered payment of 54,000 rupees in compensation, plus 12% interest from the moment the civil claim was filed until the money was

[15] State of Haryana and others v Smt. Santra (2000), INSC 239

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paid.

The State of Haryana subsequently filed an appeal with the Supreme Court, arguing that the medical officer's carelessness would not bind the state government and that it would not be held vicariously accountable. It further claimed that the expenditures granted for raising the kid could not have been properly ordered since there was no element of "tort" involved and the respondent had not incurred a loss that could be reimbursed with money.

5. Donoghue v Stevenson, 1932[16]

Donoghue v. Stevenson is a landmark case because it established the duty of care and set the groundwork for negligence as a tort. It demonstrated that a duty of care might develop between parties even if they were not contractually bound to one another.

- Facts

On August 26, 1928, Mrs. Donoghue's friend gave her a ginger beer from Paisley's Well Meadow Café [1]. She drank around half of the bottle, which was manufactured of black opaque glass, before putting the remainder into a tumbler. The rotted remains of a snail floated out at this time, giving her shock and severe gastro-enteritis.

Mrs. Donoghue could not sue for breach of contract warranty since she was not a party to any contract. As a consequence, she launched legal action against Stevenson, the producer, which eventually reached the House of Lords.

- Issue

The issue here is whether the maker has a responsibility to the product's eventual purchaser or consumer to ensure that it is free from defects that may reasonably be expected to result in bodily harm.

- Judgement

The five-judge bench in the House of Lords (Lord Buckmaster, Atkin, Tomlin, Thanker ton, and MacMillian) ruled in favor of the appellant, Ms. Donoghue, with a 3:2 majority. Lord Atkin, presiding over the court, made it very plain that the respondent had a duty of care and had failed to do so. Because no examination of the goods had been performed, it was determined that the manufacturer had a duty of care to all final customers, and that their injuries were a direct result of the manufacturer's failure to uphold that responsibility. On the other hand, Lord Tomlin and Buckmaster expressed disagreement, arguing that this went against established legal precedent.

[16] Donoghue v Stevenson (1932), AC 562

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In addition, they both questioned the case of George vs. Skivington (1869)'s legitimacy and warned that expanding the scope of manufacturers' potential legal responsibility might open the floodgates to a slew of new lawsuits in the future.

V. RECENT CASE LAWS

1. Jones v Scottish Opera, 2015[17]

- Facts

In the 2015 case of Jones v. Scottish Opera, a Scottish Court examined the question of foreseeability in a request for compensation for a working accident. Jones, a production manager who works independently, filed a claim for damages against Scottish Opera for injuries sustained when Jones slipped and fell from a trailer that belonged to Scottish opera.

For scenery, props, and other theatre equipment, Scottish opera offered a specialized delivery service. At the Dunfermline Alhambra Theatre in December 2013, Jones was employed as the technical manager. He had taken the theatre equipment out of the trailer and was leaving. Jones claimed that he had fallen due to tripping over a metal lip or ridge at the side of the trailer and that Scottish opera was at fault for not providing a ramp that might have averted the mishap. A danger in and of itself was the one-meter drop from the trailer to the earth. Jones's wrist sustained a soft tissue fracture that was probably going to hurt him for a while.

S contended that since J was not one of their employees, they had no obligation to take care of him.

- Judgement

i. The Scottish Court found that Scottish opera had a duty of care to Jones and that this obligation had been broken.

ii. Scottish opera was in charge. Scottish opera's main responsibility was to transport the trailer and its contents to the theatre. The team who worked for the theatre was mostly in charge of unloading it.

iii. If a ramp had been there, Jones would have used it to prevent harm because there wasn't one.

iv. Contrary to Jones's assertion, there was nothing near the edge of the trailer that would endanger anybody trying to enter or exit it.

[17] Jones v Scottish Opera (2015), CSOH 64

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v. It was Scottish opera's duty to provide a ramp, and it was common procedure for a business-like Scottish opera to do so.

vi. Jones's injury was predictable. There were inherent dangers in trying to access the trailer from one meter above.

vii. Jones had not engaged in grossly negligent behavior.

viii. A £10 000 settlement was granted.

2. Swapnil Mishra v Pushpanjali Healthcare and Ors, 2019[18]

In the case of Swapnil Mishra v. Pushpanjali Healthcare and Ors., the Delhi State Commission Consumer Court determined that the woman's miscarriage was caused by the hospital's recommendation that she begin preparing for her first child while she was taking powerful anti-tuberculosis drugs. She was awarded damages of 25 Lakh. The court ruled that a physician cannot intentionally mislead a patient in order to increase the physician's fee or to justify unnecessary and expensive testing. It was determined that both hospitals' physicians and staff were negligent in their care of patients, and that both institutions itself provided subpar care. The judge, however, dismissed the defendants' request for criminal prosecution.

3. Mohit Srivastava v Dr. Neelam Mishra and others, 2021[19]

- Facts

In this case, the complainant no. 1 Mohit Srivastava's wife Smt. Sandhya Srivastava complainant (hereinafter referred as patient) was under Dr. Neelam Mishra's care at Kanpur's Shivani Clinic throughout her pregnancy. Dr. Neelam Mishra admitted her to Kanpur Medical Center Pvt (hereinafter referred to as the "the Opposite Party No. 3 - KMC). Opponent No. 1 delivered a healthy daughter the same day. On enquiry, the duty doctor told Complainant No. 1 that the baby had fever; doctors were called to check whether the baby had a cold, got infected, and required ICU care; and there's no need to worry, the baby will be OK by morning. Opponent No. 2 admitted that a rod heater burnt the baby. The staff reportedly left the newborn near the rod heater to attend another delivery. Mother and kid spent two months at KMC.

Parents sent their child to Ursula Horsman Memorial Hospital (UHM), Kanpur, after KMC. The Emergency Medical Officer (EMO) found the baby suffered heat burns and dry gangrene on three left and two right toes. Complainant stated baby was treated at Apollo Hospital, New Delhi. Baby got corrective and cosmetic surgery. Complainants suffered mental agony and

[18] Swapnil Mishra v Pushpanjali Healthcare and Ors (2019),
[19] Mohit Srivastava v Dr. Neelam Mishra (2021), NCDRC 25

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spent a lot on child care.

The Complainants filed a Consumer Complaint under Section 21 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act, 1986"), alleging medical negligence on the part of the Opposite parties and seeking compensation for the irreparable loss and harm they sustained as a

- Judgement

The Court held that a flat amount of Rs. 40 lakhs would serve justice well. In this situation, contributory negligence reduces KMC hospital's culpability to 50%. Opposing Party No. 3 Kanpur Medical Center Pvt. Ltd. is ordered to pay Rs. 20 lakhs to the Complainants (parents of the kid) within six weeks, failing which the sum would accrue 9% p.a. interest till its realization. The parents must maintain the prize in a fixed deposit in a nationalized bank until the kid reaches majority. Until then, they may draw periodic interest for the child's welfare. Opponent No. 3 must also pay Rs. 1 lakh in legal fees.

4. Nisha Mathur v Medical Council of India and others, 2019[20]

- Facts

Petitioner, 56 at the time, complained of lower abdominal swelling and pain Petitioner recommended ultrasound and testing. The petitioner's ultrasound indicated a dilated gall bladder with an 11 mm stone. Simultaneously, a 2cm facial defect was detected in the anterior abdominal wall with herniated bowel and fat. The petitioner was also going to have Hernia surgery. According to the doctor, because both surgeries (Hernia and gall bladder) were to be done, the medical process specifies that the gall bladder surgery be done first, hence the petitioner was initially operated for gall bladder on After laparoscopically removing the gallbladder, a hernia procedure was conducted on 18.07.2015. While at respondent no. 3's nursing home in Dehradun, the petitioner complained of breathlessness on the petitioner was then transferred to Synergy Hospital in Dehradun, where respondent no. 3 was a visiting surgeon.

The petitioner had a foul-smelling laparotomy wound discharge with flatus and faucal fluid. She had abdominal distension. The doctor diagnosed a minor bowel anastomosis leak. It was the bowels' discharge. Immediate operation. As the petitioner was not comfortable, she requested release from Synergy Hospital and was subsequently taken to Asian Hospital in Faridabad on. According to the petitioner, a CT scan revealed pus discharge that led to

[20] Nisha Mathur v Medical Council of India (2019), UTT 439

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septicemia. The petitioner was thereafter treated and released from Asian Hospital, Faridabad. Petitioner is cured. She then accused respondent no. 3 of medical malpractice.

- Judgement

A doctor is not negligent if anything goes wrong due to mischance, misfortune, or a mistake in selecting one therapy over another. He would be accountable only if his behavior fell below a qualified practitioner's. The fact that the concerned doctor did not conduct the operation that he should have done despite his best efforts, expertise, and knowledge cannot be considered medical negligence.

5. Managing Director, Bengaluru and others v Basavaraj s/o Hanumanthaiah, 2020[21]

- Facts

When the respondent's wife was riding a bike being driven by her husband, a live 11 KV electric wire that was across the road suddenly snapped and fell over the moving motor cycle, injuring her severely. - The respondent's wife suffered severe burns from the electric shock and tragically passed away there and then. - The respondent informed the appellants that his deceased wife was making between Rs. 8,000 and Rs. 10,000 per month. - A writ petition was then filed asking for a writ in the nature of mandamus ordering the appellants to pay damages. - if the applicant is eligible for payment in relation to the death of his wife.

- Judgement

The Bengaluru Electricity Supply Firm, often known as BESCOM for short, which is a company that is controlled by the state of Karnataka, is the party that has chosen to file the appeal. The executives of BESCOM, which has a monopoly on the distribution and provision of power to eight different districts, are the ones appealing this decision.

VI. CRITICAL ANALYSIS

(A) Critical analysis of cases of 18 th and 19 th century

1. *Victoria Laundry Ltd v Newman Industries Ltd [1949]*

When a contract is broken, one of the most essential questions that must be answered is how to calculate the amount of money that can be awarded as compensation for the losses that have occurred as a result of the breach, including things like the aggravation and dissatisfaction that have been caused. In this commentary, we will attempt to determine whether or not it is permissible to award damages in such a way as to compensate additional losses that have been

[21] Managing Director, Bengaluru and others v Basavaraj Hanumanthaiah (2020), KAR 1200

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incurred as a result of a breach of contract.

A boiler had been ordered from the respondents, who were aware of the sort of business that was being done by the petitioners. Victoria Laundry Limited was the company that placed the order. However, the delivery of the boiler was delayed by approximately five months, which led to a petition for breach of contracts being submitted. They filed a claim for damages for the loss of profit that was incurred as a result of the delay. It was well known that the petitioners planned to utilize the boiler as soon as it was delivered, which demonstrated that the damages that were sustained were reasonably foreseeable in the event that the breach occurred. Respondents argued that the losses were not able to be reasonably anticipated, and that the loss of earnings constituted a unique event.

- ANALYSIS

The basic rule of the law is that the defendant is only accountable for those effects that are not too distant from his behavior. This is known as the rule of strict liability. The purpose of this is to establish a boundary for the level of responsibility that the offender may be held accountable for in relation to his or her acts. The defendant is held responsible for the activities and any repercussions that are not too far in the future but are more recent. The standard of reasonable foresight states that the defendant may only be found accountable for those outcomes that a reasonable man would have been able to anticipate at the time. In the instances of Rigby v. Hewitt (1850) and Greenland v. Chaplin, this was an argument that was made.

2. Hadley v Baxwendale, 1854[22]

One party breaches a contract when he refuses or fails to fulfil. He broke the deal. When a contract is breached, the injured party may sue to collect damages. The idea emphasises that damages should be natural and something the parties would have recognised was a consequence of the violation. Damages should be predictable. Again, what's foreseeable is in doubt. This is crucial since compensation is tied to reasonable foreseeability. In Hadley v. Baxendale, the petitioners' cornmill broke and required a new crankshaft. The defendants delivered the shaft approximately a week late, causing the petitioners to lose a week of business. The court granted them £25 in damages. The defendants argued that they didn't know the mill was inoperable until they met their contractual commitments and so can't be held accountable for the losses since they weren't reasonably foreseeable. The court approved this appeal but didn't let petitioners seek damages, claiming unforeseeability.

[22] Hadley v Baxendale (1854), EWHC J70

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- ANALYSIS

Judge Alderson noted that if the contract's particular conditions were known, the damages would be reasonable. If both parties knew about the exceptional conditions, the contract might have included recovering damages. Although the author agrees with this rationale, more duty is placed on the injured person than required, even if he did not create the breach. This puts the aggrieved party at a disadvantage because special circumstances weren't disclosed at contract time. The court stated that just because a party requested for a shaft on a certain date does not mean it would incur damages in event of a breach; it may be reasonably assumed that the mills would have a backup shaft in case of technical issues. The writer wants to point out that assigning a date and not enabling petitioners to recover lost income reduces the motivation for the violating party to respect contractual time obligations. If the only harm is loss of profit, the violating party is not penalized. Asking the defendants to pay for their carelessness would have created a precedent for such instances placing the onus on the parties to not violate their contractual commitments.

VII. CONCLUSION

Foreseeability is often a straightforward problem, but the law on causation is always changing, and deviations to the fundamental "but for" concept have only made it simpler for claimants to prevail in court. Nevertheless, proof of causation continues to be an essential and major obstacle for any claimant to overcome. The criterion of reasonable foreseeability that has been established in this case has strengthened and widened through time, and the recoverable damages are dependent on the degree of particular information had by the parties at the time of contracting. What a reasonable man would or might anticipate is plainly arguable, which, in a sense, creates its own uncertainty. The author would also like to add that including clear provisions about the course of action to be taken in the event of breach of contract within the contract itself would save the court a great deal of time and effort in determining what was reasonably foreseeable and what was not. Obviously, the specific knowledge justification cannot be disregarded and is appropriate when attempting to determine foreseeability, but there is no mechanism to penalise a party in order to make an example of what would occur in the event of a violation. Then parties would carefully consider whether or not to commit breach of contract.

Suggestions

As a researcher I would like to contribute to the research by these suggestions:

- In cases where the doctor fails to give proper information about the risk to the patient in

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such cases the doctor should held liable until or unless he shouldn't give any for not telling about risk.

- Proper duty of care should be taken for avoiding such negligence and whoever ignore should be held liable for this.
- Person before doing any act should foresee that this act is not causing harm to others.

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