



A comprehensive study based on the liabilities of psychiatric injury and damages in India and foreign jurisdictions

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Abstract

Psychiatric Injury is defined as "the branch of medicine that deals with mental, emotional or behavioral disorders". In essence, the practice of psychiatry differs from other medical specialties, which deal primarily with physical ailments and illnesses. As a result, the civil liability of psychiatrists is, as would be expected, in many ways different from that of other professionals. The issue of recovery of damages for negligently inflicted psychiatric damage is wide thought to be not solely extremely ridiculous and illogical, however conjointly in concert of the foremost disputed within the law of torts. On one hand is that the read that psychiatric illness} ought to be treated no otherwise from physical injuries to the person, and damages for the previous should be no less intensive than the latter. On the opposite hand, though, is deep unbelief regarding the truth of conditions sorted together below the label of psychiatric illness, and also the problem of characteristic and segregating truth claimants. English law has invariably tried to follow a fragile middle path with regards to pragmatism and principle, however during this pursuit it finishes up neither here nor there, and ends up wanting obviously inadequate.

Keywords: psychiatric, medicine, negligently, segregating, pragmatism

Introduction

Psychiatric damage is also known as nervous shock in English law. They fall into the environment of negligence. When an injury is caused to a person by certain actions, which are negligent or intentional, or even due to the omission of a particular action, it is recoverable under psychiatric damage.

Origin of Psychiatric Damages

The courts initially were very slow in dealing cases regarding psychiatric damages. Initially they denied claims of psychiatric injury which did not result from a physical harm-as was seen in the case of *Victorian railways commissioner v. Coultas*. In this the defendants had negligently drove the carriage onto the railway tracks while the train was on the verge of crossing the place. No physical harm occurred, but the plaintiff who pregnant received nervous shock and this unfortunately lead to her miscarriage. The courts held that the plaintiff was not entitled to receive compensation as there was no physical harm caused. This decision was so taken because then, people did not have much knowledge about the working of people's mind. But the view gradually started changing with time. It was first seen in the case of *Deliu v. White* where a carriage was driven into a pub, where the plaintiff, a lady was working. She was terrified by such an event and had a miscarriage. The courts upheld her claim and took a bold approach which opened a new area of claim.

Evolution of Psychiatric Damage

Initially medicine injury was known as 'nervous shock' as a result of it had been treated as a response to an especially traumatic event. However this was step by step replaced by 'mental injury' because of the enlargement in law on what came beneath its compass to say harms. Most mental injury

although comes under the class of Post-Traumatic Stress Disorder (PTSD). At the get-go damages couldn't be claimed for psychiatric damage unaccompanied by physical damage though currently claims may be filed for psychiatric injury while not physical damage. Damages can even solely be claimed if the mental injury provides rise to a recognized psychological disorder and not for traditional grief and sorrow knowledgeable about on the dying of a person.

Methodology

This doctrinal study or a non-empirical study performed on psychiatric damages by an undergraduate student. A doctrinal methodology was selected for this research project as a means to examine how, what, when and which laws and cases deals regarding psychiatric liabilities. I have done it with the help of secondary research method. Collectively, I have tried to gathered data from sources including internet, journals, blogs and articles. Qualitative research based on primary data collected from different survey by using an online platform.

Literature Review

Psychiatric Injury definition according to Medical Science

A psychiatric injury is when the person has suffered a mental trauma as a result of an accident, sudden shock or a traumatic event. Examples of psychiatric injuries are Post Traumatic Stress Disorder, Adjustment Disorder and depression.

Symptoms of a psychiatric injury caused by an accident or a traumatic event include

- Nightmares or flashbacks of the incident.
- Insomnia.
- Anxiety.

- Panic attacks.
- Agoraphobia.
- Hyper vigilance.
- Suicidal thoughts.

Elements required proving Nervous Shock by Negligence

In order for a claimant to receive damages from nervous shock due to the negligence of the defendant, they must prove all the elements of the tort of negligence:

1. A duty of care exists.
2. There is a breach in that duty.
3. The causal link between the breach and shock and
4. The shock was not too remote a consequence.

Determination of Victims- Primary Victims

An injured plaintiff who was involved mediates or immediately as a participant is known as the primary victim. This category plaintiff description had a wider scope with was later modified in Page v Smith which narrowed the scope describing primary victims as people who were directly involved in accident and well within the range of foreseeable injury. But the case judgment further covers rescuers, involuntary participation and people who got shock for the fear of own safety.

Case on primary victim

Jose Philip Mamphilli v. Premier Automobile Ltd
Citation(s):- AIR 2004 Sc 1524.

Facts

- The basic facts of this case are that a defective car was sold by the defendant to the plaintiff Mr. Jose as a brand new car.
- The maximum compensation has been paid for mental agony who suffered from nervous shock as a result of this incident.
- There is no doubt that appellant has to suffer mental agony in taking delivery of a defective car after having paid to the dealer for a brand new car and taking the car again and again to the dealer for repairs.

Decision of the Court

The plaintiff was thus entitled to a compensation of Rs 40,000 and costs of Rs 50,000 for being required to litigate right from the District Consumer Forum till the Supreme Court. It is common practice for dealer to ask the customer to sign and take delivery of the vehicle when it is given for repairs.

Secondary victims

The position of secondary victims is governed by the decision in Alcock v Chief constable of South Yorkshire, one who suffers psychiatric damage even though not directly related to the accident. Even then secondary victims can only claim for compensation if she falls under the category of control mechanism as explained below.

Case on secondary victim

Hambrook v. Strokes Citation(s):- (1925) 1 K.B. 141, 94 LJKB 435, 132 LT 707.

Facts

- A mother allowed her children to walk by themselves, a little way in front of her.

- The defendant's employee negligently secured a lorry, therefore it rolled down a hill to the corner where the children were walking.
- She feared that her children may have been injured, and coupled with a bystander telling her a child had been injured, she immediately suffered mental injury.

Decision of the Court

The husband was entitled to recover for the shock inflicted on her due to the reasonable fear of the immediate injury to her child from the runaway lorry. An express distinction was to be made between shock caused by what the mother saw with her own eyes and what she might have been told by bystanders, liability being excluded in the latter case. Here she (the woman) was a secondary victim but her claim was granted.

Findings

Cases related to Psychiatric damages- Cases on Foreign Jurisdictions

Scotland

Robertson v. Forth Road Joint Board (No 2)
Citation (s): (1994) S.L.T. 568 289 (OH).

Ireland

Bell v. Great Northern Railway Co. of Ireland
Citation (s): (1890) 26 L.R. Ir. 428.

Australia

Bunyan v. Jordan
Citation (s): (1937) 57 C.L.R. 1.

New Zealand

Furniss v. Fitchett
Citation (s): (1958) N.Z.L.R. 396.

Singapore

Pang Koi Fa v. Lim Djoe Phing
(1993) 3 S.L.R. 317

Canada

Beecham v. Hughes
Citation (s): (1988) 52 D.L.R. (4th) 625.

The United States

Rickey v. Chicago Transit Authority
Citation (s): (1983) 457 N.E.2d 1.

France

Schneider V. Eisovitch
Citation (s): (1960) 2 W.L.R. 169.

Germany

Bundesgerichtshof, BGH (federal Supreme Court of Justice).
Citation (s): (1971) 56 B.G.H.Z. 163.

United Kingdom

Bourhill v. Young
Citation(s): (1943) AC 92.

Cases on Indian Jurisdiction

Lucknow Development Authority v. M K Gupta
Citation(s): AIR 1994 Sc 737, 799, 800.

Gazhiabad Development Authority v. UOI
Citation(s): AIR 2000 SC 2003.

Jurisdictions related to Psychiatric Damages- Foreign Jurisdictions

Scotland

The regulation referring to is negligently inflicted psychiatric illness that bears similarities to that during England' no matter the special theoretical foundations of the two jurisdictions. Thus, the pursuer has to set up that she or he is tormented by mental injury as a result of shock, going past an insignificant emotional reaction. However, in common with different jurisdictions which can be additionally closely encouraged via way of means of Roman regulation, the Scottish courts have exhibited a more reluctance to roll returned the bounds of recovery.

Ireland

The courts in Ireland have been faster than the ones in England to realize legal responsibility for negligently inflicted psychiatric illness, with the 2 instances setting up that legal responsibility being determined within side the 19th century.

Australia

The legislation in New South Wales, the national capital Territory and the Northern Territory, however, went on the far side merely removing any bar on claims for psychiatric illness. It also ordered down some comparatively liberal rights of recovery for lawfully inflicted mental or nervous shock.

New Zealand

In current years little or no non-public damage litigation has taken location in New Zealand because of the truth that statutory accident compensation schemes become introduced there in 1974, under the Accident Compensation Act 1972, as amended via way of means of the Accident Compensation Amendment Act 1973. The scheme and interim amendments had been re-enacted within side the Accident Compensation Act 1982. Where cover is furnished via way of means of the scheme the common regulation proper to say damages is statutorily barred.

Singapore

The position with respect to negligent acts which cause pure economic loss varies from jurisdiction to jurisdiction. In Singapore, Australia and other jurisdictions, it is – in some circumstances – possible to sue for pure economic loss caused nervous shock by any negligent act. However, English law still takes an extremely restrictive approach to such claims.

Canada

Canadian law permits recovery for shock-induced psychiatric illness where such injury is foreseeable and is proximately related to the negligent act of the tortfeasor.

The United States

American courts have, at the whole, tended to be slower to realize claims for intellectual harm¹⁰⁵ than courts in England and different not unusual place regulation jurisdictions. Very importantly, however, in lots of states there may be a loss of inflexible difference among

psychiatric illness and mere intellectual distress, despite the fact that a seriousness threshold is adopted.

France

The French Civil Code incorporates a widespread precept of legal responsibility for fault. Article 1382 provides that someone who reasons harm to any other via fault is responsible to compensate that other. The case regulation definitely establishes that this covers both monetary harm (dommage material) and harm that's non-monetary in nature (dommage moral); and in addition that dommage moral extends to include now no longer most effective a psychiatric illness however additionally mere intellectual distress, inclusive of grief and anxiety, even in which this isn't always consequential on any physical harm.

Germany

Negligently inflicted psychiatric illness has been held by the German courts to comprise injury to health within Article 823(1) of the German Civil Code. It must, however, entail a medically recognizable psychiatric illness; mere fright, anguish, distress or grief will not be enough.

United Kingdom

In England the law regarding liability of nervous shock is seen to by the Protection of Harassments Act, 1997 which is under the section 1(2) and the other condition which is needed to be fulfilled for claiming of damages is given under section 7(3). As this act tells us that the person can claim for compensation if the criteria of harassment and if the course of conduct as mentioned in the act is fulfilled.

Indian Jurisdiction

It was usually seen that the Indian courts were quite liberal concerning the cases of medicine damages. As in line with the Madras court the 'impact theory' was wholly a wrong take a look at to work out in cases of nervous shock, as a result of the body was controlled by the nervous system and despite (the fact that) if there's no hurt done to the party physically, however the nervous system can be affected. This was additionally because of the fact that cases regarding nervous shock came as late as throughout the 1950's. There is just one act regulating the rules which govern a person suffering from mental illness and authority taking care of her is governed by the Mental Health Act, 1987 which is the only legislation in India in this area of tort.

Discussion

The idea of psychiatric damage has, as illustrated on this essay, long gone thru masses of modifications and adjustments in diverse instances however nonetheless now no longer reached a first-rate degree in which it may be truthfully and universally regularly occurring through all. Some inconsistencies nonetheless persist with inside the awarding of damages. One manner to cast off those inconsistencies might be to widen the class of secondary sufferers through disposing of the want for them to be gift on the scene or its aftermath. The requirement for a surprising occasion ought to additionally be abolished.

A requirement of actual or apprehended physical injury to the plaintiff was formerly a necessary condition of liability that the psychiatric illness sustained by the plaintiff should have arisen as a result of actual or apprehended physical

injury to the plaintiff.

We consider provisionally that if there is to be a list of relationships of close love and affection (whether fixed or rebuttable) it should include, at least, brothers and sisters, de facto spouses and those in a stable homosexual relationship in addition to spouses, children and parents (including anyone treated by the primary victim as a child of the family or as a parent).

Are the problems of assessing damages for psychiatric illness thought to be so much greater than for other types of personal injury that a different method or regime should be adopted for the assessment of damages for psychiatric illness than is adopted for assessing damages for other types of personal injury?

We can summarize it as follows

1. The diagnosis of mental and emotional disorders is imprecise. Psychiatrists often disagree about the very definition of a mental illness.
2. As knowledge of psychiatric causation is limited, there is difficulty in establishing proximate cause of damages.
3. The diversity of acceptable therapeutic techniques makes it difficult, if not impossible, to establish definite standards for psychiatric judgment in clinical situations.
4. As some stigma has been attached to psychiatric disorders, patients are often reluctant to bring their histories to light.
5. Due to the transference phenomenon (whereby the patient develops strong emotional ties to his therapist), many patients see the psychiatrist as a friend, and are therefore understandably reluctant to institute legal proceedings.
6. Psychiatrists are trained to handle their patients' negative reactions and are killed in dispelling hostility.
7. Often, during the occurrence of alleged malpractice, the patient is alone with his therapist. Problems of proving the facts of a practitioner-patient interaction are therefore rampant.
8. Psychiatrists perform no surgery and rarely perform inherently risky diagnostic studies.

Conclusion

Thus we can conclude that during diverse jurisdictions the regulation changed into even though different, but it changed into now no longer very huge apart. We see that during UK the judges had been to start with pretty reluctant to compensate sufferers very easily. The regulation changed into specifically primarily based totally on 'impact theory' – concerning sufferers immediately associated with the accident. Later on of route the secondary sufferers had been also taken into account. In addition, legislation was enacted by the Protection of the UK Parliament from Harassment Act 1997 to ensure fair compensation for such victims. While we see that in the United States the law is still entirely based on case law. Previously as in the UK, here too only direct victims were compensated for those who were in the "danger zone". As happened in the UK, this was also overturned for in a case (*Dillion v Legg*) which resulted in compensation for indirect victims. Case was slightly different in India. The judges here were a little more generous in awarding compensation. But this was due to the fact that the cases arose quite late, and by this time the scientific knowledge of the about women was well

advanced compared to the first cases in the UK. The Mental Health Act 1987, which dealt with cases of agony and mental harassment, was also subsequently adopted in India. After this briefing on all aspects of liability for psychiatric damages, we would like to suggest that first, this law should be codified taking into account all the situations that may arise and flexible enough to provide compensation to the victim in unpredictable situations. The basis on which she must be right should also be broadened. Its field of action should expand. For example the victim who is subjected to progressive torture also suffers from mental imbalance, the secondary victim who is not in relation to the victim suffers a shock because the act she saw was by nature so painful; so on and so on. Others should be aware of this.

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