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# Nervous shock

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**Abstract**--Nervous shock nowadays become one of the serious issues in our society. Many people lost their life due to nervous sock. The word 'nervous shock' means a psychiatric condition or injury suffered by an individual as a result of events which have occurred due to the intentional or negligent acts or omissions of another person or authority. The author through the present paper will try to find out the various issues involved in the cases of nervous shock in the light of various judicial pronouncements. The paper would also be an analysis of the current existing legal framework for nervous sock in India. The author has also made an effort to make a comparative analysis of the legislation pertaining to nervous sock existing in USA and U.K to those with Indian legislation.

**Keywords**--Nervous shock, damages, psychiatric.

## Introduction

Tort law is now in a state of crisis. A strong spirit of hostility to the old 'compensation culture' is abroad. Politicians are now in the process of introducing radical changes, designed to reduce insurance premiums by reducing the entitlements of injured plaintiffs. The Personal Injuries Assessment Board is not the last word. It seems that a range of strategies is in contemplation, including shortening the limitation period for personal injury litigation and greater proactively in relation to perjury and exaggerated claims. If these proposals had been seriously mooted a decade ago, one might have envisaged a serious confrontation between the Oireachtas and the courts. Today, I am not so sure. The Supreme Court today is willing to defer significantly to executive and legislative choices in relation to socio-economic policy. It is far from clear that the Court would strike down legislation restricting the rights of victims of torts, on the basis that the legislation violates the constitutional right of access to the courts, the right to litigate or the principle of equality. I will be laying particular emphasis on the Supreme Court's recent pronouncements on tort litigation. In short, they involve a narrower restatement of the duty of care in negligence, far more overt reference to policy and pragmatic considerations than formerly and a willingness to penalize plaintiffs heavily by a significant reduction of damages for relatively trivial contributory negligence.

## **The Liability of Psychiatric Damages in Indian and Foreign Jurisdiction**

Psychiatric Injury- which is also known as Nervous Shock is a pretty new area, has gained much importance. It is used to describe a claim where the claimant might claim for compensation even though she has not clearly received any physical harm.

### **Now, what do we mean by Psychiatric Damages**

**Medical Definition:** In medicine, circulatory failure marked by a sudden fall of blood pressure and resulting in pallor, sweating, fast (but weak) pulse, and sometimes completes collapse. Its causes include disease, injury, and psychological trauma. In shock, the blood pressure falls below that necessary to supply the tissues of the body, especially the brain. Treatment depends on the cause. Rest is needed, and, in the case of severe blood loss, restoration of the normal circulating volume. [1] Psychiatric damages are also known as nervous shock in English law. It comes under the ambience of negligence. When an injury is done to a person by some actions, which are either negligent, or intentional, or also due to omission of any particular action it is recoverable under Psychiatric Damages.

### **The Medical Specifications regarding Psychiatric Damages**

In this part we discuss the medical specifications which are required for an action to be recoverable under Psychiatric Damages. According to the Law Commission Report of U.K there are two main conditions which are to be fulfilled:

#### **Recognizable Psychiatric Illness**

According to Lord Bridge- It is first very important to establish that the person is not suffering from only grief, or normal emotional stress but it must be a positive psychiatric illness. According any "recognizable psychiatric illness" would comprise morbid depression, hysterical personal disorder, post-traumatic stress disorder, pathological stress disorder and Chronic Fatigue Syndrome.[2]\* There should also be expert medical witness or reports by medical experts proving the above facts. For mere anxiety, emotional outbreak etc, the law is not bound to give compensation.

#### **Test of Reasonable Foreseeability**

The Law Commission considered that the Psychiatric Damages should be tested beyond a simple Foreseeability test. It suggested that a reasonable Foreseeability test should be used. The first case in U.K. to be followed in this regard was *Delieu v White & Sons*[3]. In this case it was decided that the plaintiff should be able to recover only when the danger is reasonable enough to be nervous or receive mental shock. This test varies according to the circumstances of the different. But in this case there are two points which are to be noted.

First, in applying the reasonable Foreseeability test the defendant must presume that the plaintiff is a prudent woman who has a "normal standard of

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Foreseeability”. [4] Then when the plaintiff has established her prudent nature and that it would be normal for a reasonable woman to suffer the nervous shock she suffered in the particular case, she is entitled to recover full compensation.

Second, foresee ability of the psychiatric illness is considered ex post facto in the light of all that has happened. [5] Unless hindsight is used, “the question ceases to be whether it is foreseeable that a reasonably robust person would have suffered psychiatric illness as a result of what actually happened and becomes instead whether it is foreseeable that such a person would have suffered psychiatric illness as a result of what might have happened but did not in fact do so”. [6] Thus we see that the judge must see herself to be a reasonable, prudent woman, when deciding the cases of psychiatric damages. In the words of Lord Bridge, the judge should decide a particular case relying on her own opinion as that of a reasonably educated woman.

### **History of Psychiatric Damages**

#### **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 [7]. 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 [8] 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 cases regarding psychiatric damages:**

This part of the chapter is dealt with in two parts. The former part looks into the development of cases regarding this type of damages in various foreign jurisdictions like U.K., U.S.A. The next part looks into the same within the Indian jurisdiction.

#### **Foreign Jurisdictions:**

U.K.

When we talk of any particular type of cases the U.K jurisdiction is the first thing that comes to our mind. So first we will deal with the evolution of cases regarding psychiatric damages with regard to the English jurisdiction. As mentioned in the previous sub-part the first cases regarding psychiatric claims were as early as 1888, when the case of Victorian railways commissioner v. Coultas [9] arose. But after those various cases arose and as the scientific knowledge of people regarding how the human mind works increased, things began to be looked in a very different way, which will be regarded in the following cases.

The first hint of change was when in *Delieu v White*[10] the court gave compensation for nervous shock which was not caused due to physical injury. Thus the thing called “impact theory” which said that no nervous shock would be recognized without physical injury was abandoned. This was done to cover a new category of plaintiffs whom we call ‘secondary victims’. These things are dealt with in details in the next chapter. Such situation occurred in 1925 when a mother, who was pregnant and was leading her three other children to school. When she left her children near the school a lorry came rushing and the woman was terrified. As a result she had a miscarriage. Here again she was a secondary victim but her claim was granted.[11]

After the above mentioned case there was no case of nervous shock until 1943 when there arose a chance for further expansion of victims. But it was denied on the ground of Forseeability. In this case a pregnant lady came down from the tram and heard about an accident. Later on she went to the accident site, saw blood and received mental shock resulting in miscarriage. But in this case her claim was not granted because the accident was not considered reasonably foreseeable.[12] But this decision was contradicted in *Boardman v. Sanderson*[13] where the plaintiff was compensated even when she heard the accident that involved her son and then arrived just after the accident.

Thus we see that in English jurisdiction the view of the judges changed quite a lot as time passed. In the beginning nervous shock without physical harm was denied. But then the “impact theory” was ultimately abolished. Then the law further expanded in *McLoughin v. O'Brian*[14] where the accident involved the plaintiff's children and husband. But she was about two miles away from the scene. But when she was informed and she arrived at the hospital she saw the miserable condition of the family members and received a nervous shock and severe persisting psychiatric illness. Here she was compensated on the ground as a secondary victim.

## **U.S.A**

Now we move onto the history of how cases evolved in U.S.A. Here to similar to U.K the courts were lethargic about cases on psychiatric damage. In lot of cases compensation was denied on the ground of being out of the ‘zone of danger’. But the first case which was decided for the plaintiff was *Dillion v. Legg*[15] where a little girl was injured in a car accident. Her mother and sister suffered nervous shock after seeing that and sued for compensation .The court told that from this case onwards the case should be dealt with the test of foreseeability not by seeing whether they were in the ‘zone of danger’. The reason that was given was that sometimes some close relations can cause psychiatric damages even though she is not within the so-called ‘zone of danger’. Henceforth in the cases in U.S.A this reasoning applied and refined according to the circumstances which we will deal in brief in this chapter.

In 1989 a minor son was injured and when his sister informed her mother, she came running only to see her son unconscious and covered with blood. As a result she had a nervous shock. Here the trial judge decided in favor of the plaintiff, the mother[16]. Here thus we see a notifiable change, in the case of

Dillion v. Legg the trial judge did not give compensation to the plaintiff, but the higher court did. Here the trial court did not hesitate to give compensation. This we see that the situations were changing with time. After the case of Dillion v. Legg [17] the criteria of being near the accident zone, having a relation to the accidentee was considered a full-proof test for justice in these cases.

### **Indian Jurisdiction**

It was generally seen that the Indian courts were quite liberal regarding the cases of psychiatric damages. According to the Madras high court the 'impact theory' was totally a wrong test to determine in cases of nervous shock, because the body was controlled by the nervous system and even though if there is no harm done to the party physically, yet the nervous system could be affected. This was also due to the fact that cases regarding nervous shock came as late as during the 1950s. In the case of Halligua v Mohansundarum. [18]. The Madras High court held the aforesaid decision.

The generosity of Indian courts can also be found in cases like Lucknow Development Authority v. M.K Gupta[19] where damages were give to the plaintiff because of the harassment which Mr. Gupta, the plaintiff received from the Government officials. This decision was followed in many similar cases like Ghaziabad Development Authority v. Balbir Singh[20]. It can also be seen in cases like Spring Meadows Hospital v. Harjot Alhuwalia[21]. Here the plaintiff suffered nervous shock when their child was left in a vegetative state due to negligence of the defendant, where she was taken for treatment.

### **Determination of Plaintiff and Defendant**

To determine who the plaintiff is where the injury is not so visible is tough and so a lot many unbiased cases could come up. Which could lead to different many theories of determining one? So in order to generalize this a bit; Based on the reasonability test victims are divided in two categories for the convenience in providing compensation:

- Primary Victims
- Secondary Victims

It was Lord Oliver, in his judgment in Alcock v Chief Constable of South Yorkshire Police[22]e, according to him the two potential victims are a passive and unwilling witness of injury caused to others.

### **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[23] 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.

**Secondary victims:**

The position of secondary victims is governed by the decision in *Alcock v Chief Constable of South Yorkshire*[24], 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.

**Control Mechanism**

Lord Wilberforce in *McLoughlin v. O' Brian*[25] case held that a secondary victim needs to satisfy three additional control mechanisms to limit the scope:

1. Proximity of relationship with immediate victim:- That is the secondary victim was in a close relationship of love and affection with the immediate victim; such as spouses, parents, children and scope of the relations stated above can be expanded to fiancé, grandparents etc.
2. Proximity in time and space to the events causing the psychiatric illness: According to situation in particular case the plaintiff must have witnessed the actual accident or aftermath but within short space of time (some liberty is provided under this criteria provided according to situation) [26]
3. The means by which the psychiatric illness is caused: - Information received by third party is not considered because of being exposed to circumstances or subsequent reflection on event is different from witnessing an event and its aftermath.

**Sudden Shock requirement:**

According to Lord Ackner “the sudden appreciation by sight or sound of a horrifying event which violently agitates the mind”[27] Shock must be sudden and it is presumed that it happens when there is close relationship with victim. The accident which takes place should be qualified enough so that a reasonable presumption can be made that a normal woman would suffer psychiatric damage. A shock is clearly not required in cases of psychiatric illness induced through stress at work. Thus, to sum up a defendant is liable as mentioned above. Compensation to be paid to primary victim and secondary victims covered under control mechanism and also to plaintiff who are victim by sudden shock; which varies from situation to situation. Whereas *NO LIABILITY LIES ON THE DEFENDANT WHERE THE CLAIMANT IS MERELY INFORMED ABOUT THE ACCIDENT.*

Present Law regarding liability of Psychiatric Damages [Foreign Jurisdictions- UK, USA]

The law regarding the liability of psychiatric damages has been in different jurisdictions different. In this chapter we intend to look mainly the current acts which regulate the liability of nervous shock in:

UK:

Protection of Harassments Act, 1997

USA:

### **Based on Case laws**

#### **UK**

In England the law regarding liability of nervous shock is seen to by the Protection of Harassments Act, 1997. Under the section 1(2) of this act it is said: For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.[28]

The other condition which is needed to be fulfilled for claiming of damages is given under section 7(3) which is as follows:

(3) A “course of conduct” must involve conduct on at least two occasions  
3A) a person’s conduct on any occasion shall be taken, if aided, abetted, counseled or procured by another—

(A) To be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) to be conduct in relation to which the other’s knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counseling or procuring.[29]

Thus 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. Thus in the case of *Wainright v Home Office*[30] where the plaintiff Alan Wainright and his mother went to the prison to meet his stepbrother who had been imprisoned for dealing with drugs . The police had no idea, from where he got supply of drugs and they were ordered to strip-search everyone who visited him. Thus while strip-searching the son; the officer accidentally touched the penis. A psychiatrist concluded that the son had suffered severe nervous shock and thus could read or write correctly, also his mother had suffered nervous shock which was not expressly visible. The Wainrights sued the Home Office for compensation. The judges held that a claim cannot be given affirmed if ‘a merely negligent act contrary to general principles, give rises to claim for damages for distress because its affects privacy rather than some other interest like bodily safety.’[31]

### **United States of America**

In the United States of America there is no such act for dealing with liability of psychiatric damages- it is mainly based on case-laws. As of now foreseeability is the basic core of judgments reasoning. The courts also do not differentiate between physical and psychiatric injury. Though the approach followed by the judges is to recognize the victim through the criteria that the psychiatric injury suffered by the victim is not a result of a physical injury but on the other hand for a successful claim damage should be supplemented with a physical injury, that too within the scope of immediate risk.

A case which can thus be referred here is *Consolidated Railway Corporation v Gottshall*[32]. Here the crew member filed a suit of emotional distress on the basis that he was forced to participate & observe the events surrounding a fellow

employee's death because of the circumstances created by the authority's negligence. This type of injury was not recognized in Federal Employees Liability Act [33] but as the case was passed the law stated in this was interpreted in a different sense, hence following rules for such claims were decided by the court "the proper test for evaluating such claims was under which court determines whether the factual circumstances provide a threshold assurance that there is likelihood of genuine and serious emotional injury and if so evaluates the claim in light of traditional tort concepts, with the forces resting on plaintiff's injury." [34]

Second important aspect here is foreseeability in another case called Consolidated Railway Corporation v Alan Carisle [35]. In this case a crew member got compensation on the basis that he was forced to work in unfavorable conditions due to which he got emotional distress. On the basis of these we could thus infer that even though no act is passed for psychiatric damages in the USA judges have adjudicated on the basis of foreseeability of a reasonable woman. Thus giving it a hope of development.

### **Indian Approach on cases of Psychiatric Damages**

In India, the area regarding the liability of tort law is not very much developed. A well known case in this regard is the case of Lucknow Development Authority v M K Gupta [36]. In this case the Lucknow Authority failed to provide a flat to the plaintiff MK Gupta in due course of time as stated by it during the time of payment for it. In such a situation the plaintiff filed for compensation under harassment and mental agony. He was granted compensation on the ground that the judgment socially benefited the victim and so in the part of the judgment stating to grant relief was also paid.

From the above case we can very rightly infer that India does not have any statute regarding liability for nervous shock. Cases regarding psychiatric damages are adjudicated on the basis of reasonability of a prudent woman. Further many cases have come up for psychiatric damages like the case of Ghaziabad Development Authority v Balbir Singh [37] and Haryana Development authority v Vijay Aggarwal [38] where the same line of judgment was followed. But this was again distinguished in the case of Ghaziabad Development Authority v UOI [39] where there was a contract for a plot which was delayed in giving than the date specified date in the contract. Here the court looked the case only from the point of the contract and followed The Specific Relief Act, 1963; without taking into account any aspect of tort. Here the Supreme Court also said that it was improper for compensating the plaintiff for mental languishment.

From this we can very well point out that the major cases that have come up regarding such damages are related to Consumer Protection Act. One such case is that of Jose Philip Mamphilli v Premier Automobile Ltd [40] in which the maximum compensation has been paid for mental agony, in India. The basic facts of this case are that a defective car was sold to the plaintiff Mr. Jose as a brand new car, who suffered from nervous shock as a result of this. The manufacturer chose to deny liability for such a trivial matter and contested the case. S N Variacuc In his judgment quoted that "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.” The plaintiff was thus entitled to a compensation of Rs 40,000. Here arises the question of how much compensation to be awarded.

Now quoting the latest judgment regarding nervous shock in which damages were paid was Bangalore Development Authority v Syndicate Bank<sup>[41]</sup> clearly states that “the amount of compensation will depend on the fact of each situation, nature of harassment, the period of harassment, & nature of arbitrary or capricious or negligent action of the authority which led to such harassment.” Thus 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. The rest of the aspects are dealt in the manner as explained above.

### **Conclusion and Suggestions**

Thus we can conclude that in various jurisdictions the law was although different, yet it was not very wide apart. We see that in UK the judges were initially quite reluctant to compensate victims very easily. The law was mainly based on ‘impact theory’ – concerning victims directly related to the accident. Later on of course the secondary victims were also taken into account. Also now a law has been enacted by the British Parliament Protection of Harassment Act, 1997 to ensure the correct compensation of such victims. Whilst we see that in USA the law is still entirely based on case-laws. Before like the UK, here too only direct victims were compensated- those in the ‘zone of danger’. As happened in UK this was also overruled in a case [Dillion v Legg] which enabled the indirect victims to be compensated. The case was a little different in India. The judges here were a bit more generous in giving compensation. But this was due to the fact that cases arose quite late, and by that time scientific knowledge of woman was much advanced than it was during the early cases in UK. In India the Mental Health Act, 1987 was also later on passed that looked into cases on mental agony and harassment.

After this briefing about all the aspects of liability of psychiatric damages we would like to suggest that firstly, this law need to be codified keeping in mind all the situations that can take place and flexible enough to provide compensation for victim in unforeseeable situations. Also basis on which it needs to be just on should be wided. Its scope should expand.

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