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Contributory Negligence and its Applicability when an Individual does not Wear a Safety Gear

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ABSTRACT

Negligence is a tort that is caused due to a breach of care by which injury or damages are caused to another individual. This act is usually caused due to a person not taking sufficient care while doing an activity that a prudent man would have. Negligence can be done to both a person and an object. Out of the different types of negligence, this article will focus mainly on contributory negligence which is also known as a partial fault.

The concept of contributory negligence according to The Law Reform (Contributory Negligence) Act, 1945 points out that "where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim shall not be defeated by reason of the fault of the person suffering damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the Claimant's share in the responsibility for the damage". For the tort to be in the nature of contributory negligence, there must be a proximate cause of actual injury and if the accident could have been avoided if the individual took action as that of a prudent individual, then he will not be able to claim this defence.

Keywords: *Contributory Negligence, Recovery of Damages, Doctrine of Apportionment*

I. INTRODUCTION

"When a person's good sense and caution are adequate to defend him, the law would not save him from his own incompetence."

The more deeply individualistic conception that an individual is his own first bulwark against outside intervention, and that the duty of remedial law takes over where the power of self-protection ceases, is supplemented in the common law by the civil law conception that an individual can do as he pleases on his own.

The following article contains a brief description about contributory negligence, common law relating to the recovery of damages that can be awarded or apportioned with respect to

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contributory negligence between the plaintiff and the defendant. Further the article analyses the situation when an individual commits negligence which can be accorded to his failure to wear a safety gear in context of contributory negligence. It also analyses the possible effects of such contributory negligence over the damages accorded to the plaintiff. The degree of care depends upon the gravity of injury an act possesses. If an act in which any kind of omission or ignorance is likely to cause injury to a greater extent more care is required and if the danger is slight less care is required. In order to determine whether a person is liable for negligence is loosely based on his rationality to act on that particular situation. "Contributory negligence is the ignorance of due care on the part of the plaintiff to avoid the consequences of the defendant's negligence. This concept is loosely based on the maxim- "Volenti non fit injuria" (injury sustained voluntarily). It means If a person is not taking due diligence in order to avoid consequences resulting out from the negligence of the defendant the liability of negligence will be on both of them."

(A) RESEARCH METHODOLOGY

The method of research opted by me in this project was doctrinal research from both primary and secondary sources. Majority of research work has been done via Articles, Case Laws and Case Laws available in online databases. Other sources like various work by learned authors has also been referred.

(A) Literature Review

Liability for Industrial Accidents: A Comparison of Negligence and Strict Liability (by James R. Chelius)

The theoretical claims concerning negligence and strict liability schemes are briefly reviewed in this article. The design of these structures in practise within the time frame under consideration is then investigated. The effect of these programmes on the distribution of capital to occupational protection is examined in the third section. The review will be summarised and the public's ramifications will be examined in the final segment.

Negligence in Tort Law-With Emphasis on Automobile Accidents and Unsound Products (by Clarence Morris)

Charles 0. Gregory has been dedicated this paper. The position of negligence in contemporary tort law is the subject of our discussion. The main body of this article will discuss the principles served (and disserved) as the result of personal injury lawsuits involving motor vehicles and goods liability turns on blame. However, the essay begins with a few general observations.

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Comparative Negligence and Automobile Liability Insurance (by Cornelius J. Peck)

The relationship between comparative negligence and auto liability insurance is the subject of this paper. It is hoped that such a study would provide a positive and substantiated solution to the widely argued but never published issue of whether the implementation of comparative negligence would result in higher car liability insurance premiums. Further findings can be made in response to the commonly held belief that comparative negligence is committed by all parties involved even in states where the contributory negligence provision is in effect.

An Empirical Test of the Comparative and Contributory Negligence Rules in Accident Law (by Michelle J. White)

The incentives for injurers and claimants to prevent injuries under both the older contributory negligence rule and the newer comparative negligence rule have been established in this article and therefore can be empirically tested. The model takes into account the fact that, in the case of a car crash, drivers have no way of knowing who they will be involved with in advance, and whether they will be the injurer, the injured, or both. It also provides for uncertainty in legal decision-making.

II. CONTRIBUTORY NEGLIGENCE AND ITS APPLICABILITY WHEN AN INDIVIDUAL DOES NOT WEAR A SAFETY GEAR

(A) Contributory Negligence

Negligence is described as either failure to accomplish anything that a prudent and reasonable man would do or doing something that a prudent and reasonable man would not do. In cases including the tort of neglect, the rule of law presents the claimant with multiple protections, one of which is "contributory negligence."[2]

Contributory negligence is characterized as an act or action on the plaintiff's part that has a fair likelihood of introducing new hazards to his condition and causing himself damage that was not entirely caused, but was caused in part at least by his own wrongdoing. It puts the primary responsibility of defending one's own interests on the individual.[3]

The following theories are widely advanced as the basis for the contributory negligence defense: (1) proximity of lawful causation; (2) indemnity or contribution between joint tortfeasors.[4]

[2] Negligence in Tort Law-With Emphasis on Automobile Accidents and Unsound Products by Clarence Morris
[3] Ibid
[4] Contributory Negligence by Francis, H. Bohlen

1) Legal proximity of causation may be described as the conception of cause and effect introduced by the courts as the test for determining whether a specific harm is to be ascribed to a particular act or inaction as its result as a prerequisite to the imposition of legal liability.

   The plaintiff's contributory negligence, which is a primary cause to his injury, precludes recovery; nevertheless, the plaintiff's remote contributory negligence is considered solely for the purpose of reducing damages.
2) The contributory negligence defense cannot be applied to the law that denies contribution or indemnity between joint tortfeasors.

III. RECOVERY OF DAMAGES IN CONTRIBUTORY NEGLIGENCE

In contributory negligence, the complainant is excluded from recovery if he fails to take self-protective action against a risk created by the defendant, just as he is barred from recovery if he causes the danger and the defendant fails to shield him from it.[5]

It precludes recovery even from an apparently negligent defendant by whose own social wrongdoing was a concurrent proximate cause of his damage.[6]

Following evolution, in all lawsuits brought to recover damages for injury to a person or property incurred by the fault of another, the fact that the plaintiff may have been guilty of contributory negligence shall not preclude a recovery where the defendant's negligence was gross in contrast, the contributory negligence of the plaintiff was minor. However, the jury will include the plaintiff's contributory negligence in calculating damages in addition to the amount of contributory negligence attributed to the plaintiff.[7]

IV. THE DOCTRINE OF APPORTIONMENT OF DAMAGES

When a claimant is found to be guilty of contributory negligence, most common law jurisdictions have laws in place to include a mechanism for apportioning damages.

The Law Reform (Contributory Negligence) Act 1945 was enacted to provide a solution to the circumstances where there was a need to act against the plaintiff in situations where the plaintiff was at fault or the plaintiff demonstrated evidence of negligence in their conduct, which culminated in their injuries. This form of statute called for a reduction in the damages given to the plaintiff where it was decided that the plaintiff had a share of liability for the injuries they suffered and that the plaintiff's act was in part responsible for causing the injury. It is important

[5] Comparative Negligence and Automobile Liability Insurance by Cornelius J. Peck
[6] Ibid
[7] Ibid

to remember that in such cases, the judge cannot exclude apportionment to the appellant on the basis that the plaintiff was ignorant of the degree to which their negligent conduct could intensify their injuries incurred.[8]

However, where a situation exists in which the complainant would have sustained the same amount of injury even if a protective system had been used, then no reduction would occur. As a result, where contributory negligence has occurred, the decision to reduce the damage and the extent to which the damage can be reduced rests with the judge's discretion, who considers all of the factors at hand and comes to a fair conclusion as to the extent to which the plaintiff's own recklessness plays a role in the case.[9]

However, Beldam LJ in obiter contended that a 100 percent commitment from the plaintiff's hand would not exist as a basis for a full mitigation of liability because it would negate the intent of the assumption of part of blame on the defendant.[10]

V. FAILURE TO WEAR A SAFETY GEAR

The failure of a person to wear safety equipment represents an interesting application of contributory negligence principles, in that it is argued that the plaintiff contributed to the damage, rather than to the accident.[11]

The syllogism goes like this: (1) The actions of a fair man under similar circumstances is the principle to which a plaintiff shall comply for his own protection in order to prevent contributory negligence. (2) A rational person is aware of the dangers of being involved in an accident and the security provided by protective equipment. (3) As a result, a person who fails to wear a safety gear does not behave in a fair manner and is guilty of contributory negligence.[12]

Under common law, a contractor that fails to follow these standards of conduct is therefore not found incompetent and thus not responsible for injury losses if he will use one of three main protections. These defences include fellow-servant neglect, employee risk-taking, and contributory negligence by injured staff. Contributory negligence takes place if the wounded person should have prevented the repercussions of the employer's negligence by exercising ordinary caution. These common-law defences could be interpreted as an attempt by employers and workers to create an effective combination of accident protection.[13]

[8] Contributory Negligence by Francis, H. Bohlen
[9] Ibid
[10] Ibid
[11] Liability for Industrial Accidents: A Comparison of Negligence and Strict Liability Systems by James R. Chelius
[12] The Seat Belt Defense-An Exercise in Sophistry by J. Muma
[13] Ibid

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The evidence of four factors is required to establish contributory negligence in relation to the failure to use a safety device.[14]

1. It must be shown that the appellant was subjected to an unreasonable danger for which a prudent person would consider precautionary measures.[15]
2. It must then be shown that the protective mechanism in question is usually successful in either minimising the likelihood of an accident or reducing the harm that would naturally occur if that danger materialised.[16]
3. Additionally, it must be proven plaintiff had access to the device but did not use it.[17]
4. Finally, it must be shown that the plaintiff's failure to use the device caused the plaintiff's injuries to worsen, or that the device, if used, would have avoided any of the resulting harm.[18]

(A) The Unreasonable Risk

To hold the appellant contributorily liable, it must be shown that he neglected to take adequate precautions to protect his own wellbeing. However, this is inadequate since a prudent person would not take steps to mitigate every foreseeable danger. The danger must be such that a sensible person would consider it imprudent not to take any precautions.[19]

Another important consideration is the cost of not taking the risk in comparison to the gains of the action in question. The greater the relative cost, the more likely it is that a sensible person would take the risk without taking the requisite precautions. However, in negligence, the standard of care has always been objective. What the plaintiff's own opinion of the case is, or what he feels or insists is best for himself at the moment, has no bearing on the rational human principle by which his actions must be judged.[20]

(B) The General Effectiveness of the Device

In addition to an unreasonable danger, one must prove that the safety device is effective in avoiding the sort of accident that is conceivable, or that if that risk materialises, the safety device will ideally reduce the resulting harm.[21]

(C) Availability of Device

[14] Seat Belts and Contributory Negligence by Frans F. Slatter
[15] Ibid
[16] Ibid
[17] Ibid
[18] Ibid
[19] Ibid
[20] Ibid
[21] Ibid

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Plaintiff would be cleared of responsibility if the protective equipment was not available to him, unless that availability was due to his own negligence. It has also been proposed that the complainant must have prior knowledge of the device's presence. This tends to implement a subjective test rather than an objective one.[22]

(D) Causation

There is no such thing as negligence without injury, and the plaintiff's inability to employ a protective system is irrelevant unless it can be demonstrated that the injuries sustained would have been less serious if the device had been employed.[23]

Once the four components of the protection have been identified, the damages must be apportioned. The only losses open to apportionment are the extra damages, those that should have been avoided, and even in this case, the defendant that caused the incident negligently would pay the majority of the loss.[24]

If a plaintiff's previous conduct is determined to have played no role in causing an effect or injury but has aggravated the resulting damages, the best view is to limit the plaintiff's compensation to the degree that his damages have been aggravated because of his own conduct.[25]

Under the contributory negligence provision, the injurer is liable to the claimant for the entire sum of the victim's injury where the court deems the injurer responsible but the victim not. Otherwise, the person who caused the damage is not responsible at all. This "all-or-nothing" law has been called "harsh" because it views the injurer and survivor unequally where both are considered negligent, and because it has the knife-edge function of moving from full compensation to no compensation for victims of negligent injurers based on whether victims are found to be below or over the threshold amount assessing negligence.[26]

In general, the design of statutory civil duty has remained constant for the last four decades; liability is levied solely for injury sustained by the defendant's fault, and his victim's contributory negligence is normally a complete shield.[27]

As a result, the law is seen as less equitable than the recently developed comparative negligence rule, which mitigates but does not abolish the harm compensation where the claimant is

[22] Ibid
[23] Ibid
[24] Liability for Industrial Accidents: A Comparison of Negligence and Strict Liability Systems by James R. Chelius
[25] Ibid
[26] Ibid
[27] Negligence in Tort Law-With Emphasis on Automobile Accidents and Unsound Products by Clarence Morris

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considered incompetent. If both the injurer and the claimant are shown to have acted negligently, the victim's costs are divided according to the comparative negligence law.[28]

Damages are distributed accordingly under varying variations of the comparative negligence law. The common rule in US maritime law, which mandates that damages be divided evenly if both sides are considered negligent, is the most basic sharing rule. Sharing rules, on the other hand, divide responsibility in proportion to fault.[29]

The court is presumed to determine responsibility based on whether the injurer's real treatment level reached or surpassed a threshold level required by the court to preclude a finding of negligence. The due-care norm applies to this criterion.[30]

The court's due-care standard may be higher, smaller, or equal to the reasonably efficient level of care.[31] Economists commonly view the negligence law as requiring the most economically effective standard of treatment in order to prevent being considered negligent.[32] Judges and juries, on the other hand, can enforce any due-care requirement in any given situation and are not expected to justify their decision.[33]

VI. CONCLUSION

The statute expects all to take the care that a man of common prudence might take. As a consequence, where safety equipment is appropriate, the passenger should wear it.[34] If the passenger's injury may have been avoided to any degree by wearing safety equipment and the passenger refused to do so, the Court would limit the amount of damages to be awarded.[35] Nonetheless, it is the Defendant's duty to present facts that, on the basis of probability, the rider might have sustained no or fewer severe injury if the protective devices had been worn. Parties should seek specialized information on the topic of protective gear in relevant situations.[36] It can be concluded that "contributory negligence is the defence available to the defendant who restricts or prevents the plaintiff to get rewards or compensation. It is the omission of an act or ignorance to take due diligence for avoiding the negligence of others. In the case of contributory negligence burden of proof lies over the defendant. There are certain conditions to which the

[28] An Empirical Test of The Comparative and Contributory Negligence Rules in Accident Law by Michelle J. White
[29] Ibid
[30] Ibid
[31] Ibid
[32] Ibid
[33] Ibid
[34] Contributory Negligence by Francis, H. Bohlen
[35] Ibid
[36] Ibid

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defence of contributory negligence doesn't apply as mentioned above."

Including in countries without safety regulations, the common law has gradually accepted that failure to wear safety equipment constitutes contributory negligence in the last two decades. Tort legislation should do all it can to promote the use of protective devices.[37]

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[37] Ibid

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