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Emotional Distress and Claim in Law of Torts

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ABSTRACT

This article will analyse the concept of emotional distress which is caused due to physical injury in torts. Traditionally, emotional anguish has been characterised as "parasitic" in nature and is only understood through the lens of a physical damage. The significance of acknowledging emotional suffering as a separate cause of action was realised as a result of shifting social perceptions. A person's physical and mental integrity can be violated, and the plaintiff can suffer a corresponding loss. Today, this tort is widely recognised as a distinct cause of action in the majority of legal systems around the world.

Hence this article will discuss the different torts which cause emotional distress to the plaintiff through various case laws related to this. Also, this will discuss that whether emotional distress is taken into consideration or not under torts.

Then this article will also discuss the cause of action and various grounds for claim of damages under emotional distress in torts. This paper will also be throwing light on remedies available for emotional distress in torts.

Keywords: *Emotional Distress in Torts, Claim in Torts, Cause of Action, Remedies.*

I. INTRODUCTION

(A) Concept of emotional distress

Traditionally, emotional anguish has been characterised as "parasitic" in nature and is only understood through the lens of a physical damage. The significance of acknowledging emotional suffering as a separate cause of action was realised as a result of shifting social perceptions. A person's physical and mental integrity can be violated, and the plaintiff can suffer a corresponding loss. Today, this tort is widely recognised as a distinct cause of action in the majority of legal systems around the world.

a. Origin And Evolution Of The Tort Of Emotional Distress

In the landmark case of *I de S et ux. v. W de S*², the tort of emotional distress can be traced back to the tort of assault under trespass to body. A woman whose husband operated a bar was the

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² *I de S et ux v. W de S* [1348] Y.B. 22 Edw. III, f. 99, pl. 60.

subject of the ground-breaking case. The defendant swung an axe at the woman but missed his target after seeing the bar was closed. The defendant had to make restitution after being found guilty of assault.

Mental suffering is an emotional response to an experience brought on by the memory or repercussions of a particular event, occurrence, pattern of events, or condition. Typically, emotional anguish is recognisable by its signs (ex. Anxiety, depression, loss of ability to perform tasks, or physical illness).³

The tort of emotional distress was first given a clear structure by the Restatement of Torts, which is still in use today. According to the First Restatement, a person is not responsible for bodily harm or emotional distress that results from behaviour that is intended to or is likely to cause emotional disturbance but can be applied in some exceptional cases.

The Restatement (Second) of Torts expanded its definition and publicly acknowledged that a person's emotional integrity should be protected by the law in the same manner as his bodily integrity. The Restatement holds that regardless of the method used to carry out the invasion, both physical and emotional integrity are subject to invasion, and that when they are, the plaintiff suffers essentially equivalent damage.

II. ANALYSIS

A psychological injury known as emotional hurt results from an individual's "extreme and outrageous" conduct. Under tort law, it is a punishable act, and punitive penalties are generally available. It tries to prevent the wrongful action of the defendant from disrupting the people's mental tranquilly and well-being.

An act that is so stunning and obvious that it exceeds all bounds of decency for a reasonable man in society is considered excessive and outrageous behaviour.

(A) Elements Of the Act Constituting Emotional Distress:

1. The act must be reckless or intentional
2. The act must be extreme and outrageous
3. The act must give rise to the injury
4. Plaintiff must suffer severe mental injury⁴

³ Eugene Kontorovich, 'The Mitigation of Emotional Distress Damages' [2001] 68(2) UNIVERSITY OF CHICAGO LAW REVIEW 491, < <https://www.jstor.org/stable/1600379> > accessed on 22 September

⁴ Eugene Kontorovich, 'The Mitigation of Emotional Distress Damages' [2001] 68(2) UNIVERSITY OF CHICAGO LAW REVIEW 491, < <https://www.jstor.org/stable/1600379> > accessed on 22 September

1. **The act must be reckless or intentional**- the act leading to emotional distress must be either caused due to the negligence of defendant or it is the intentional infliction of the injury.
2. **The act must be extreme and outrageous**- the act leading to emotional distress must not be usual, rather it should be of very high intensity and must be shocking to mental health of plaintiff.
3. **The act must give rise to the injury**- the act leading to emotional distress must either cause mental injury or physical injury leading to mental agony and pain which infringes the right of plaintiff causing him legal injury.
4. **Plaintiff must suffer severe mental injury** - the act leading to emotional distress must cause mental agony, anguish and pain due to injury caused to the plaintiff.

Since we can see from all these elements of emotional distress that it well qualifies the ambit of tort. So it must be considered as a valid tort for claiming the damages under this. In this today's world full of stress, it is very important that tort of emotional distress must be given proper place in torts. Because plaintiff suffers a severe mental shock due to the injury inflicted on him and if only mental shock is suffered then he can't claim complete damages if left as it is. This can lead to huge loss to plaintiff.

III. VARIOUS TORTS CAUSING EMOTIONAL DISTRESS

People are shielded by tort law from harms brought on by the wrongdoing of others. The law acknowledges emotional or psychological pain as a separate type of injury, despite the fact that we typically identify tort claims with harms to persons or property. This understanding came about historically as society came to understand the seriousness and long-term effects of mental injury.

Though emotional distress can be caused due to any type of tort committed on the plaintiff like in cases of negligence, nuisance, death due to tort, defamation etc but there are specific types of torts which consider emotional distress as a valid claim under torts. They are:

1. Assault

An unlawful threat to cause bodily harm to another person combined with the capability to carry out that threat at the time the threat was made has been defined as an assault. The damages that can be recovered for assault are those for the plaintiff's mental disturbance, including fear,

embarrassment, and the like, as well as any physical illness that may ensue from them.⁵ Assault, as opposed to battery, is fundamentally a mental invasion rather than a physical one. Because of the attacker's mental invasion of the victim's previous tranquillity, rehabilitation may be sought regardless of the level of emotional anguish the assault victim experienced. Even if there are no other damages, the plaintiff who has been assaulted by the defendant may be entitled to compensation for emotional anguish.

2. Battery

Battery is generally regarded as the willful, harmful, or offensive application of force to another person's body or to anything connected to them without that person's permission. So severe mental agony and pain is caused due to application of force to plaintiff. This results to the claim for emotional distress caused due to battery.

3. Nuisance

Nuisance is the unreasonable interference with the enjoyment of plaintiff's possession of property. Since nuisance is a continuous tort, it causes constant and severe emotional distress to the plaintiff because he is not able to completely enjoy his property.

4. Defamation

Defamation is defined as any maliciously false statement made in writing or verbally that damages a person's reputation, undermines public opinion's confidence in them, or arouses hostile or unfavourable opinions about them.⁶ Since defamation results in degrading someone's reputation in front of others results in severe mental pain and agony.

5. Death due to tort

Death caused due to tort results to the loss of someone's loved one which results to mental anguish and pain to the plaintiff's closed ones, due to this legal injury they can claim compensation from the defendant.

6. Intentional infliction of pain

The case of *Wilkinson v. Downton*⁷ from the nineteenth century is when the idea of intentional inflicting of mental distress first emerged. In *Wilkinson v. Downton*, the defendant intentionally told the plaintiff that both of her husband's legs were hurt and were being treated

⁵ John J. Kircher, 'The Four Faces of Tort Law: Liability for Emotional Harm' (2007) 90 Marq L Rev 789, <<https://scholarship.law.marquette.edu/facpub/33/>> accessed on December 2 2022.

⁶ John J. Kircher, 'The Four Faces of Tort Law: Liability for Emotional Harm' (2007) 90 Marq L Rev 789, <<https://scholarship.law.marquette.edu/facpub/33/>> accessed on December 2 2022.

⁷ *Wilkinson v. Downton* [1897] 2 QB 57

at the hospital. She experienced a nervous shock and developed a major disease as a result of hearing this. As a result of the defendant's deliberate act that breached the plaintiff's right to safety and physically harmed her, she was given damages. However, if such an incidence had occurred, the defendant would not have been responsible because he would have had a good reason for it. The tort of willful inflicting of emotional distress originally mentioned in a 1948 addendum to the Restatement of Torts. It was said that if someone knowingly causes another person to experience extreme mental distress, they are accountable for both the subsequent bodily harm and the emotional suffering. Under the traditional common law, damages for mental injuries could only be obtained in connection with torts like assault, battery, or false imprisonment. The plaintiffs could add mental distress as an extra hardship if they had gone through bodily discomfort or were in danger of suffering physical harm. In the end, even in the absence of physical or material loss, the courts recognised psychological injury as a distinct cause of action. [1] The two recognised torts for emotional harm in the majority of countries today are the intentional infliction of emotional distress and the negligent infliction of emotional distress.

The courts have established strict requirements for proving an intentional infliction of emotional distress claim since the notion of offensive behaviour is subjective by its very nature. The plaintiff must establish, in order to prevail, that the defendant participated in extreme and outrageous behaviour that caused another person great emotional distress either knowingly or carelessly.

The second Restatement, published in 1965, further clarified this norm. A claim for intentional infliction of emotional distress is permissible under the law's section 46 in the following circumstances: ⁸

(1) A person who, through extreme and outrageous conduct, recklessly or intentionally causes severe emotional distress to another person is liable for that distress and, if the other person suffers bodily harm as a result, for that bodily harm.

(2) The actor is responsible if they engage in such activity with a third party and purposefully or recklessly cause the third party great emotional distress.⁹

If bodily harm occurs as a result of the distress, it may do so either

(a) to a member of the person's immediate family who is present at the time or (b) to anyone

⁸ Russell Fraker, 'Reformulating Outrage: A Critical Analysis of the Problematic Tort of IIED' (2008) 61 Vand L Rev 983, < <https://scholarship.law.vanderbilt.edu/vlr/vol61/iss3/5/>> accessed December 1

⁹ Russell Fraker, 'Reformulating Outrage: A Critical Analysis of the Problematic Tort of IIED' (2008) 61 Vand L Rev 983, < <https://scholarship.law.vanderbilt.edu/vlr/vol61/iss3/5/>> accessed December 1

else who is present.

7. Negligent infliction of emotional distress

In *Dulie v. White*¹⁰, while the plaintiff was working behind the bar, one of the defendant's employees carelessly operated a horse van and slammed it into the plaintiff's husband's property. The plaintiff, who was expecting at the time, miscarried as a result of fear and shock. She received compensation for the nervous shock she experienced as a result of the defendants' breach of the duty of care they owed the plaintiff.

This means that even if there was no malicious intent or negligent disregard for the threat of injury, a person who has experienced severe mental suffering may nonetheless seek compensation for the losses caused by another party's irresponsible actions. As part of a negligence-based cause of action, the courts will try to determine if the defendant violated a duty of care to the plaintiff, causing emotional distress.¹¹

Some of the early cases from which this concept evolved are discussed below:

1. Mrs. H.I. Halligua vs Mohanasundaram and Another¹²

Facts:

Due to the collision between the defendant's taxi, in which the plaintiff was riding, and a tram, she experienced mental suffering and agony with only minor physical injuries.

Issue:

Whether damages should be awarded for psychiatric injury when not coupled with a physical injury.

Decision:

As a result of the ruling that psychological damages should be considered and may give rise to a separate cause of action from physical losses, the defendant was found to be responsible.

2. Lucknow Development Authority v. Manek Gupta¹³

Facts:

The plaintiff submitted a registration form for an apartment built by the Lucknow Development Authority. The Consumer Protection Act of 1986 does not consider building work to be a service, so the State and National Commission issued orders for the delivery of services, which

¹⁰ *Dulieu v. White & Sons* [1901] 2 KB 669.

¹¹ William H. Theis, 'Intentional Infliction of Emotional Distress: A Need for Limits on Liability, The' (1978) 27 *DePaul L Rev* 275, <<https://via.library.depaul.edu/law-review/vol27/iss2/3>> accessed on December 1 2022

¹² *Mrs HI Halligua vs Mohanasundaram and Another* [1951] AIR 1951 Mad 1056.

¹³ *Lucknow Development Authority v MK Gupta* [1994] 1994 AIR SC 787.

were refused. The petitioner and others who had invested money in the apartment endured many years of mental anguish and sorrow.

Issue:

Whether damages should be awarded only on the basis of physical injury or mental injury should also be included?

Decision:

The court held that The Authority should make up for the poor services as well as the harassment and mental anguish caused to the plaintiff by the construction work which concluded that the construction activity would fall under the ambit of services.

IV. CAUSE OF ACTION IN EMOTIONAL DISTRESS

Emotional distress can be caused due to any wrong or tort committed which leads to mental as well as physical loss. As emotional distress caused affects the plaintiff completely, it affects its day-to-day work, his efficiency and his health. As we studied before that emotional distress is itself considered a separate tort and it leads to legal injury in the form of mental agony and pain.

So, plaintiff has this cause of action against defendant in court of law to claim remedies for the mental distress caused to him.

V. GROUNDS FOR CLAIM IN EMOTIONAL DISTRESS

To prove emotional distress, you'll need to be able to prove:

1. The defendant had a duty to behave reasonably and to not behave outrageously or in an extreme manner likely to cause distress
2. The defendant breached that duty by intentionally or recklessly behaving outrageously
3. These actions by the defendant caused you distress and harm¹⁴

After proving all these, plaintiff can claim emotional distress under torts on the basis of :

1. Mental pain and agony
2. Any health issues caused due to mental stress
3. Any economic or non – economic loss caused due to stress or tort committed

So these are the grounds for which plaintiff can claim the tort of emotional distress.

¹⁴ John J. Kircher, 'The Four Faces of Tort Law: Liability for Emotional Harm' (2007) 90 Marq L Rev 789, <<https://scholarship.law.marquette.edu/facpub/33/>> accessed on December 2 2022.

VI. REMEDIES FOR EMOTIONAL DISTRESS UNDER TORTS

1. Damages

Damages for emotional suffering are intended to make up for the psychological toll your injuries has had on your daily life.

When injury is caused due to the tort of emotional distress the plaintiff can claim damages from the defendant. In many different types of personal injury cases, emotional distress damages may make up a significant portion of the recovery. If you are hurt in an accident and you successfully file a personal injury case, you can typically obtain damages for your emotional suffering in addition to the more obvious economic losses (medical expenses, lost earnings, etc.) resulting from your physical injuries.

Depending on the nature of your injuries and the particulars of your case, the amount and availability of emotional distress damages can vary substantially. You may be able to negotiate a personal injury settlement with an insurance provider that includes payment for emotional distress even if you choose not to file a lawsuit for your injuries.

2. Injunction

A judicial order restraining defendant from carrying out an activity which he wasn't supposed to do or directing him to carry an activity which he was supposed to do. So in emotional distress, court can issue injunction order for defendant so as to temporarily stop the cause of wrong caused to plaintiff which ultimately caused him mental pain and agony.

For ex- A is continuously playing loud music at night from several days due to which his neighbour B is suffering from mental stress and agony leading to emotional distress. So court can issue injunction order to stop A from playing loud music.

3. Abatement

Abatement is the judicial order or process of reducing or otherwise abating something by removing the cause of pain causing emotional distress.

For ex- A has installed a brick burning machine in his apartment situated in a residential area. Due to running of the machinery, stench smell and fumes are continuously released due to which nearby apartments are getting severely affected causing them lot of stress and anxiety. So now court can issue abatement order to completely remove the cause of emotional distress.

4. Non economic damages

Compensation given for Pain, emotional distress, humiliation, harm to one's reputation, loss of

enjoyment in activities, and deterioration of prior injuries are examples of non-economic damages.

For instance, following some brain and spinal injuries, people who had previously enjoyed an active lifestyle that included dancing, long walks, and playing sports as a way to decompress after work may no longer be able to do these activities or may have them severely restricted. The plaintiff may then find it more difficult to enjoy life due to a decrease in social interaction or a change in lifestyle. So for this emotional distress caused due to change in lifestyle, court can provide non-economic damages to the plaintiff.

VII. CONCLUSION

The defendant bears a great deal of culpability under the tort of mental distress. It is necessary to include emotional anguish in the scope of the mitigation theory in order to eliminate excessive liability on the defendant. Accordingly, despite suffering injuries, the plaintiff should not be compensated for damages that could have been prevented by exercising reasonable caution. The usual tendency of people to recline with their hands folded when they have a cushion of insurance is likewise something that this regulation aims to curtail. Hence we can conclude that emotional distress is considered as a distinctive tort in law of torts. And there are remedies available and developed by the courts of law.

This doctrine encourages the plaintiffs to act as though they are uninsured in order to lower the societal costs associated with their injuries. Additionally, standardised methods for assessing damages are required. The adjectives "extreme" and "outrageous" are quite arbitrary and are highly ambiguous, subject to many different interpretations. It is necessary to bring uniformity to the law in order to put the plaintiff and the defendant on an equal footing because the damages in a psychiatric tort cannot be seen or measured.
