

Dissertation
On
Development and importance of Tort Law: Bangladesh perspective

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Abstract

Tort law deals with private civil remedy such as monetary compensation. In some countries tort law developed quite largely and others have adapted really well. But In Bangladesh tort law is not quite developed. The main reason for undeveloped law in our country is the not knowing about the tort law and its importance among the people. For this reason tort law cases are quite low in contrary to other developed countries. Tort law is very important law to know where the victim can claim monetary compensation from the person who commits tortious Act. Sometimes the pecuniary remedy is supposed to be more important for the victim and his family rather than seeking punishment. Bangladesh is a developing country where every law is as important as other to grow the country fast and which can give sufficient remedy to the people. In current scenario of Bangladesh law of the tort is as important as any other law which establishes one's private right.

List of Abbreviation:

ACC : Anti Corruption Commission

AD : Appellate Division

BAT : British American Tobacco

HCD : High Court Division

Ltd. : Limited

USA : United States of America

CHAPTER 1

Introduction

1.1 Background Of the Study

Tort law gives remedy to a person against whom a breach of duty has been committed. The tortious liability arises when the person who has suffered damages can seek for monetary compensation.¹ Tort law in common law jurisdiction is a civil wrong other than breach of contract. In Bangladesh tort law history is not quite pleasing because tort law cases are pretty low in Bangladesh. But in recent years we can see that number of tort law cases have arisen a lot and people have got sufficient remedy by those judgment. Countries like Bangladesh which is fast growing, we need to know the implementation and importance of every law which is enforced in our country which helps people to get proper remedy. Tort law development will be increased by judicial decision. For that we need to know the proper implementation of tort law in Bangladesh and to proper implementation of law we need to know the history and importance of tort law.

1.2 Research Question

Research question in the paper will be of two types including both main research question and subsidiary research question. The subsidiary research question will be key to answering the main research question.

- a) How much the tort law developed in Bangladesh and how important the tort law is in Bangladesh?
 1. How the tort law developed in Bangladesh?
 2. Whether Tort law is important to Bangladesh perspective?

1.3 Research Justification

Tort law has been quite developed in many countries in Bangladesh Tort law is developing. The countries know the importance of tort law Bangladesh is also trying to develop tort law. In recent years tort law cases are increasing. To develop a law we need to know about its history, area of interest, how it works, how it will enforce etc. The research is conducted to know about the tort law development in Bangladesh which is currently giving pecuniary remedy to the people. Bangladesh is trying to adopt tort law like many other countries. Tort law implementation is same as like any other countries in the world. The research will also find out how much Bangladesh have adopted tort law and also tort is essential for Bangladesh or not? Whether tort law cases will increase in future or not? Whether Bangladeshi people are aware of this law?

1.4 Research Methodology

The research will be conducted following the qualitative research method where books, journal, articles, online newspaper will be discussed and analyzed to reach the purpose of the dissertation. That means primary and secondary information both are prioritized in this dissertation. To complete the dissertation we can take help from the books from the university library when the varsity will be opened.

1.5 Chapter Outline

- a) Chapter 2 of the dissertation includes the concepts and objects, nature and scope and principle of tort law.
- b) Chapter 3 of the dissertation discuss about historical development of tort law in Bangladesh over the years.
- c) Chapter 4 discuss about the importance of tort law in Bangladesh.
- d) Chapter 5 concludes the dissertation with recommendations.

CHAPTER -2

Tort Law

2.1 Introduction

The law of torts provides pecuniary compensation for injuries to person and property. The law of tort deals with the property which is recoverable by law. It tries to shift the loss from the victim to person who caused the loss. Tortious liability generally arises out of breach of duty primarily fixed by the law. This duty is generally towards persons and generally its breach redressed by an action for unliquidated damages. Tortious liability is different from crime because it is redressed by compensation or pecuniary damages rather than punishment or fine though same wrong may be crime or tort as well jointly. In the law of torts malice play a minor role but in some tortious liability malice play an important role. The claimant may be compensated for :

- Pecuniary loss: loss of earnings, cost of medical care, out of pocket expenses that have arisen out of tort, any damages to the claimant property.
- Non-pecuniary loss: Damages for pain and sufferings.

Some example of torts like:

- 1) Intentional Tort: It is intentional and have a specific motive.
- 2) Negligence Tort: Failure to do standard care.
- 3) Strict liability Tort: Doesn't depend on intention or proof of negligence.
- 4) Product liability Tort: Any injury suffered by the buyer for seller product then seller will be held for product liability.

The largest area is law of negligence. In Bangladesh the concept of tort law is not known to the general people and application of tort law in Bangladesh is not also countable as there are few successful cases.

2.2 Objective of Tort Law

- The main objective of the tort law is to provide compensation to the person who have suffered loss.
- The other main objective of Tort law is to punish the wrongdoer.

The law of tort is an uncodified law which is applicable in most of the nations it deals with the people who have been wronged or their right have been infringed. Most of the time the guilty person is supposed to pay some compensation to the victim.

2.3 Nature and scope of Tort Law

The difference between in nature of civil wrong is only can be differentiate by the remedy given to the victim. Not every civil wrong is tort. **Sir Fedrick Pollock** stated that every tort is an act or omission which is related with one of the following ways to harm. A civil wrong may be labeled as a tort only where victim can claim appropriate remedy for it. **Salmond** defines torts as **“it is a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively breach of trust or other merely equitable obligation”**. **Winfield** mentions “tortious liability arises out of breach of duty primarily fixed by the law: this duty is towards the persons generally fixed by the law: this duty is towards the person generally and its breach is redressable by an action for unliquidated damages”. In a English case, it is held that contractual liability is completely irrelevant to the existing of liability in tort.²

2.4 Principles of Tort Law

Five principles of Tort law which everyone needs to know:

1) *Injuria Sine Damnum* and *Damno sine Injuria* – Those are two Latin principles one means legal injury without damage and other ones means damage without legal injury. Damage should be in the form of money, comfort and health. Mere loss of memory or property doesn't come under damages. The injury should be legal injury infringement of your legal right. Loss or detriiment is not good ground of action. In a case of vicarious liability named

²Grant vs Australian knitting Mills Ltd. (1936 AC 85)

Ashby vs. White³ where the plaintiff was a qualified voter parliamentary election, while the defendant who was returning officer wrongfully refused to take a vote of the plaintiff. Although the plaintiff didn't suffer any loss by this wrongful Act the legal rights of the plaintiff to vote was infringed. So therefore plaintiff held liable. Another leading case named **Bhim vs. State Of J and K**⁴ parliamentary assembly. Police there wrongfully arrested him and he was not even presented before the magistrate with in stipulated time so police violated plaintiff's constitutional right and was liable to receive 50,000 from the defendant.

2) Vicarious Liability – Man is liable for the torts committed by him but under this a man will be held liable if he hasn't done any wrong. In vicarious liability the employer has to suffer for the harm done by the employee. A reported case of **Lister vs. Hasley Hall Ltd**: it is an English tort law case, creating a new precedent for finding where an employer is vicariously liable for the torts of their employees.

3) *Volenti Non- fit Injuria*- This principle simply relates to the person who voluntarily consents to risk, knowing about the aftermath he has no claim against the injuries received. A reported case of **Tomlinson vs Congleton Borough Council**⁵ where a girl who had trespassed on the railway was hit by a train. The House of Lords held that girl had voluntarily accepted the risk by breaking through it.

4) Defamation – Defamation is an oral or written statement that can hurt someone's reputation. In Bangladesh defamation is a civil and criminal offence. Most of the cases filed in Bangladesh are related to defamation. In the reported case of **King vs Osborne**⁶ in this case, the defendant was held liable for printing up

5) False imprisonment- unlawfully restraining a person without his will by someone who doesn't have any legal authority to do so amounts to false imprisonment. In the case of **Serra vs Lappin**⁷, the court stated that false imprisonment is the non-consensual, intentional confinement of a person without lawful privilege for an appreciable length of time.

³ (1703) 92 ER 126

⁴ AIR 1986 SC 494

⁵ [2003] UKHL 47

⁶ 571 P.2d 850 (1977)

⁷ 600 F 3d 1191 (2010)

2.5 Background of Tort Law

The law of torts in Bangladesh is presently, is mainly the English law of torts which itself is based on the principles of common law of England. British empire brought common law and formal tort law to sub- continent through three presidency court. In 19th century **Oliver Wendell Holmes Jr.** Examined general history of negligence in search of general theory of Tort law. **Marton Z** re -examined the history of negligence for the same purpose. Other scholars have also entered this debate. **Professor Garry Schwartz** also entered into this debate. According to **Friedman**, nineteenth century judges believed that holding business strictly liable for all the injury. The question was whether tort liability for personal injuries originally was fault or strict liability will never be answered. Many legal systemss clearly distinguished between crime and civil wrong though both are tried in the same court. In some systems all crimes are also torts when private remedy results. Apart from early confusion between subject matter and crime, the subject of tort has been in unsystematic growth. The law was administered in the communal courts and the wrongs were of simple types. Law cannot represent the most advance thinking of its age at any time. By following the Roman law, English tort system has been developed. There are various categories of torts. Those are have different cause of action. The tort of negligence is the most important tort in Bangladesh perspective and its provide a wide scope of protection specially since **Donoghue vs Stevenson**⁸. For liability under negligence, a duty of care must be established. Breach of duty established by **Nettleship vs Weston**⁹. Breach of causing harm established by **Smith vs Leech Brain and co.**¹⁰ A famous reported case of duty of care where a company called caparo took over another company by buying majority of its share. The audit was prepared by group of accounts and was intended for shareholders not outsiders. Once caparo owned the company it found the finances were pretty shoddy¹¹. Another reported case where police owed a duty of care to a passer -by who was injured when they tried to arrest a drug dealer.¹²

⁸ [1932] UKHL 100

⁹ [1971] 2 QB 691

¹⁰ [1962] 2 QB 405

¹¹ Flaming james jr. Vicarious liability

¹² Robinson vs Chief Constable of West Yorkshire Police [2018] UKSC 4

CHAPTER -3

Development and Application of Tort Law

3.1 Development Of Tort Law

Development of Tort Law in England- In the present a civil remedy means where a person who suffers any loss recovers compensation. The remedy for tort is a 'debt of justice' the royal courts are being bound to redress one subject to another. No royal pardon can excuse tort liability. It is the court discretionary power whether the court will treat the wrong as a tort or to be left undressed. Many torts are also crime but the two aspects are quite distinct e.g. causing death by careless driving. Many legal systems clearly distinguished between crimes and civil wrong. Under the English legal system, tort and crimes are tried separately. Many legal systems clearly distinguished between crimes and civil wrong though both are tried in same court. In some system all crimes are automatically regarded as tort in case of private damages. Apart from early confusion between subject matter and tort the various wrongs have received a remedy haphazardly through diverse form of action. In particular, torts are now classified by references to the degree of intention or negligence necessary to support an action. This is modern and displays converse moment in the crime. The law was administered in the communal courts it remained formless and no doubt the wrongs were of simple type. The manorial courts also tried tort law cases and the range was quite wide. Many cases were admitted in that could which could be filed in the common law court before. Ancient private law are differs from modern law because an act gives prima facie liability but an omission was disregarded. **Dongue Vs Steveson**¹³ certainly the starting point in this regard. The UK House of Lords has developed the famous **Doctrine of Neighbor Principle**. Over the time different cases have laid down to establish different principle.

Development of Tort Law in Bangladesh -Throughout legal system of Bangladesh tort law plays an important rule. But frankly speaking in Bangladesh's legal system that's not the case. There is misconception between people that there is no tort law in Bangladesh. The

¹³ Donghue vs steveson [1932] UKHL 100

field of tort still in most part remains an uncharted territory in Bangladesh. There is no doubt that this misconception is raised because of we have no fundamental structure of how tort law should work. Our both of our AD and HCD of the Supreme Court have given some judgments which have boosted the development of tort law in Bangladesh. Here are some cases- **Catherine Masud vs Md. Khurshed Miah and others**¹⁴- In the issue was that whether it was bus driver's fault that caused the accident. However, this case was transferred Manikgonj to the HCD on the basis of a petition made by the Article 110 of the constitution.¹⁵ The fact was that On 13.08.11 Tareq Masud along with nine others was returning from Manikgonj to Dhaka in a Microbus. When the microbus arrived on the place named "joka" on the Dhaka Aricha Highway the Collusion took place with the bus named " Chuadanga deluxe paribahan" coming from the opposite direction. As a result of the accident, five passengers of the microbus suffered instant death and all surviving passengers were taken to the hospital. The question arose whether it was bus driver fault that caused the accident and if the owners would be held vicariously liable for that. Here the court held that the owners were about the absence of the fitness certificate so owners were held vicariously liable. ¹⁶ Another reported case relating to assessing of head of damages and quantum of damages is the case of **Bangladesh Beverage Industries Ltd Vs Rawshan Akhter**¹⁷, the plaintiff claimed several heads on the basis on the monthly salary of the deceased till his retirement, receiveable increment per year other potential income and loss of reputation of the family. In that case, the AD drew a distinction between general damages and special damages. The HCD held that the plaintiffs are entitled to compensation for continuous pain and sufferings. ¹⁸ The principle of fair and reasonable compensation is more appropriate to non-pecuniary heads such as pain and sufferings. It should be noted that vicarious liability, being a tortious concept is not cause of action. Whether or not an employer has sufficient control over his employee is a certainty of matter and require taking evidence from the parties **Grameenphone Ltd. Vs Chairman First Labour,Dhaka and Ors**¹⁹ - It was understood that doctrine of vicarious liability was applied in that case.. The **Grameenphone**

¹⁴ 67 DLR 527

¹⁵ Article 110 of the constitution of the people's republic of Bangladesh- Transfer of cases from High court Division.

¹⁶ Catherine Masud vs Md kashed Miah.

¹⁷ (69 DLR 129)

¹⁸ Sri Manamanath Kuri vs Md Mukhlesur Rahman and another (1960) 22 DLR (SC) 51.

¹⁹ (2018) 70 DLR 581.

Ltd. Case would stand as a strong proposition in favour of the employers against who the plaintiffs might bring a tortious liability under the doctrine of vicarious liability. ²⁰Another very famous case is **British American Tobacco Bangladesh Ltd. Vs Begum Shamsun Nahar**²¹ – Where a female employee of the appellant company filed a money suit against the employer company claiming for the tort committed by its employees at her workplace by committing acts of sexual harassments. Here the AD of the Supreme Court held that a person can be held liable for tort as well as damages may be claimed against him for such wrong doing as well as an organisation or establishment. The AD further noted that sufferings arising out of insomnia, depression, nervousness, fear, feelings of powerlessness and other symptoms of psychological harm which sometimes may give rise to emotional breakdown. So, therefore, sexual harassment gives rise to liability under tort law. In **CCB Foundation Vs Government Of Bangladesh**²², the fact was Zihad a 4 years boy while playing in the Shahjahanpur railway station fell inside a 16 feet uncovered shaft which was left abandoned by Bangladesh Railway and Wasa authorities. Being aggrieved the petitioner filed the writ petition under Article 32 and Article 102 of the constitution²³ in those article describes as "compensation can be awarded for breach of public duty and gross violation". Here the issue is the the respondent caused grave public injury and violation of the Article 32 right to life of the Constitution and if the cause of death was gross negligence in part of the respondent. Here the court held that the gross negligence and its secure monetary compensation ²⁴. Our country also recognizes the principle of Vicarious Liability in this regard section 34 of the Penal Code 1860 will be enforceable section 34 of the penal code, 1860 states that when a criminal offence is done by a several person with common intention the persons will be liable for the offence as if it were done by him alone²⁵. The principle of vicarious liability is applicable in both the civil and criminal cases .Therefore we can tell that the principal of vicarious liability is well established principle in our country. Another Bangladeshi case was

²⁰ Grammenphone Ltd vs Chairman First Labour, Dhaka and Ors (2018) 70 DLR 581.

²¹ 66 DLR (AD) 80

²² 278 5 CLR (HCD) (2017), Hereafter referred to as simply – ‘the Jihad case’

²³ Article 32 of the Constitution Of Bangladesh – Right to Constitutional Remedies.

Article 102 of the Constitution Of Bangladesh – Powers of the High Court Division to issue certain order and directions.

²⁴ Article 21 of the Constitution of Bangladesh – " No person shall be deprived of his life or personal liberty".

²⁵ Aminul Islam and others vs The State 8 BLT (AD) (2000) 129

Sri Manmanath Kuri vs Md. Muklesur Rahman and Others²⁶ – In that case, the HCD held that the plaintiff's are entitled to compensation for continuous pain and sufferings and will be adequate to one's pain and sufferings. The principle of fair and reasonable compensation is more appropriate to non- pecuniary head of damages for which monetary compensation can be awarded.

Compensation culture is new and somehow is developing in our jurisdiction. In western countries tort law has played a vital role in the compensation claim but in Bangladesh tort is developing. The major areas of tort is negligence, defamation, nuisance, professional negligence, Vicarious liability, Occupiers liability and others. There are some codified law in our country which covers certain area of tort law. For example, causing death by negligence in section 304 A and defamation in section 499 to 502 of the Penal Code, 1860.

Reasons for Insufficient development Tort Law in Bangladesh - Reasons behind the insufficient development of tort law in Bangladesh because it is not codified. Undoubtedly, a code is useful, and it is well to recognize a branch of law is still in the process of growth it is difficult to prepare a code but with out a specific code the proper development of tort law is not possible. There is no uniformity and certainty in its rules and principles or doctrines. There is a plethora of precedent on law of torts available in England on so many points those cannot be applied in Bangladeshi situation. Because of this reason there is lack of case laws in Bangladesh regard to law of torts. The law of torts have established doctrine of absolute liability in case of **M.C Mehta vs UOI**²⁷, the SC established the doctrine of absolute liability. Other reason why tort is not developed in Bangladesh is because of poverty and illiteracy. The judicial system of Bangladesh is quite expensive and dilatory. Many people cannot afford high range of court fees. If he however does so he gets after long gap of years tk 500 or 1000 as compensation. Most of the people in Bangladesh are unaware about their rights. Also lack of political awareness most of the people unaware about their legal rights. People have no certainty that what will be the outcome after filing plea.

²⁶ (1970) 22 DLR 51 (SC).

²⁷ [1987] AIR 1086 (SC)

3.2 Application of Tort law

Application of Tort Law in Bangladesh – Our constitution have kept a window open under Article 102²⁸ in a limited extent for the aggrieved party to seek remedy from the Honourable HCD of the supreme court. Recently few decision of the HCD has made clear that application in tort law in Bangladesh is quite important. In a reported case of **Green line Bus** where the AD upheld the orders of the High Court Division directing the bus company to pay 50 Lakhs Tk as compensation to Russell who lost his leg being hit by a Green line bus paribahan. Here the principle applied was Vicarious liability principle where the owner of the bus also held liable for the act of the employer.²⁹ Tort is an interesting branch of law which is applicable in day to day life. It provides often compensation mostly in form of money in other cases where the money cannot be adequate the court have the discretionary power to decide. Since the independence of Bangladesh 50 years, we have seen very few cases of tort law in Bangladesh. And from those cases few are successful. Though we have our own legislation such as **Penal Code,1860** and **the Code Of Criminal Procedure, 1908** have codified and acknowledged the principle of Tort Law incidents like Rana plaza collapse reminds us that there is still a black hole and we are often being limited by non – application of tort laws. This Rana Plaza incident caused 1129 deaths and approximately 2515 injuries³⁰. That the collapse was due to negligence on the part of the regulatory bodies as well as the building and garment factory worker eventually it failed to uphold the weight and the building collapsed. In this case, there was negligence but the justice was not done perfectly so we can say that there is a huge lacking in of application of tort law in Bangladesh. In Bangladesh, important laws under which legal action for tortious acts lies are:

²⁸ Article 102 of the Constitution Of Bangladesh – Powers of the High Court Division to issue certain order and directions.

²⁹ Compensation or confiscation | The Daily Star | <https://www.thedailystar.net> › news

³⁰ The Rana Plaza Accident and its aftermath - ILO. <https://www.ilo.org> › geip › lang--en

Fatal Accident Act, 1885- The Act which provides remedies to family of that person who's death is caused by a wrong of another person.³¹

The Code Of Civil Procedure,1908 - This code regulates proceedings in civil cases. Section 91 of the code provides that in cases of public nuisance or other wrongful act affecting the public.³²

Tort law can be enforced under the Code Of Civil Procedure, 1908 under section 9 and 151 of the Code of Civil Procedure.

Penal Code,1860: In this code there is a lot of provisions which can be enforced by Tort law Example: Section 44 of the Penal Code, 1860 which describes “Injury”. Section 268 which describes guilty of a public nuisance. Section 499 which describes defamation and there are many other relevant sections which enforces tort law.³³

Transfer of Property Act, 1882: Under this Act, the Sections 67 and 106 of the Transfer Of Property Act, 1882 law of Torts Can be applied. In the case of **Hasina Vs Haji Md. Ekramul Hoque** where two section s of Transfer Of Property was applied. The plaintiff had also the option for claiming torts in that case.³⁴

Constitution: Under Article 37, 38, 44 and 102 of the Constitution of the People's Republic of Bangladesh law of torts can be applied easily. We can also apply tort law by following public interest litigation under Article 102 of the constitution of the People's Republic Of Bangladesh.³⁵

Situation where we can enforce Tort Law in Bangladesh-

There are some situations where we can enforce tort law in Bangladesh successfully-

a) **Road Accidents-** Road accidents are the major issue to concern. Most of the accidents happen because of the negligence of the driver and unfit vehicles running in the road. In

³¹ Fatal Accident Act, 1885 (Act No.XIII Of 1885).

³² Code of Civil Procedure, 1908 (Act No. V of 1908).

³³ Penal Code, 1860 (Act No. XLV of 1860).

³⁴ Transfer Of property Act, 1882 (Act No.4 of 1882)

³⁵ The Constitution of the People's Republic of Bangladesh

those cases the driver or the owner are exempted from the liability. So by applying the tort law, victim can be compensated by the defendant.

- b) **Unlawful arrest-** Clause 1 of Article 33 of the Constitution of the People's Republic of Bangladesh states that no person who is arrested shall be detained in custody without being informed, in clause 2 of Article 33 states that every person who is arrested and detained shall be produce before the nearest magistrate court within 24 hours of arrest. We can prevent the unlawful arrest by applying the law of torts.
- c) **Hartal and Blockades-** In Hartal and Blockades many wrongful confinement happens. In our country there is no such law which can prevent us from wrongful confinement. So we can claim for tort law where any wrongful confinement happens.
- d) **The Workmen Compensation Act, 1991-** A workmen's death resulting in the course of employment out of course of employment. But this act is not implemented properly. So applying tort laws the compensation can be recovered.
- e) **Consumer's Right-** The purpose of the Consumer's Right Production Act 2009 is to define standards and to formulate procedures to promote Consumers right and interest. But we can see that this act failed to develop the prevailing system. So, by improving tort laws, we can improve the existing system.
- f) **Wrong done by bureaucrats and Autonomous bodies:** As per law of Bangladesh, nobody has the right to injure others intentionally or innocently. However, nowadays people are getting injured by the wrongful act of the bureaucracy and their instrumentalities. By enforcing tort laws, people can get rid by the bureaucrats and autonomous bodies.
- g) **Gas leaking Incidents:** In Bangladesh, people suffer because of gas leak. Bangladesh people suffers many problems because of gas leak several times. In 2006 incident took place because of the gas leak in Tangail company named Naiko (Canadian gas exploration company). The victim of this incident could claim for Tort. To reduce this kind of incident the implementation of tort law is essential for our country.
- h) **Refrain to Move:** According to Article 36 of the Bangladesh constitution, “every person have the right to move throughout the Bangladesh, to recite and settle in any place there in.

Remedies available under Tort law in Bangladesh – There are two broad types of remedy available in Tort law.

1. Judicial Remedies.
2. Extra- Judicial Remedies.

Judicial Remedies are of three kinds:

1. Damages.
2. Injunction.
3. Specific Restitution of Property.

Extra Judicial Remedies are of five types:

1. Expulsion of trespasser.
2. Re-entry on land.
3. Re-Caption of goods.
4. Abatement.
5. Distress Damage pheasant.

Remedies given in Bangladesh Tort law cases: **CCB FOUNDATION vs. Government of Bangladesh**³⁶. In this case the victim right to compensation was established for the first time. The court established applied doctrine of *res ipsa loquitur* to award 20 lacks taka compensation against Bangladesh Railway Board and Fire services for their gross negligence.

In the case of **British American Tobacco Ltd vs. Begum ShamSun Nahar**³⁷- Here the HCD held that BATB Company vicariously liable for the tort committed by its employees. The Appellate division awarded Tk. 25 crores as damages along with interest at the rate of 15 % against the BAT.

³⁶ 278 5 CLR (HCD) (2017), Hereafter referred to as simply – ‘the Jihad case’

In the case of **Bangladesh Beverage Industries Ltd vs. Rowshan Akhter** ³⁸- A company was order to pay 1.7 Crores in compensation in a money suit to the victim's family member who was a journalist and he was killed by the negligent driving of the company's driver. The wife of the deceased fought the legal battle for 24 years. Finally in 2016 the AD awarded monetary compensation for the act and was held vicariously liable for that.

In the recent case of Russell, 26 years old a car driver of a power company. He was knocked down by the bus near Mayor Hanif Flyover. The HCD held that Green line Paribahan to pay 50 lakhs Tk to Russel who lost his leg by this accident.³⁹

³⁹ HC orders Green Line to pay crash victim Russell by May 22 <https://bdnews24.com>

CHAPTER 4

4.1 Importance of Tort Law in Bangladesh -

Tort law is an area where victim will get damages for wrong doer against him. Torts can occur in various ways. Since Bangladesh is a dualist country the effect of international human rights treaties ratified by the state remains limited unless expressly enabling legislation is enacted. Bangladesh has a common law system claims in tort law can be made for human right violation without any statutory right to seek remedies. But the theories are even theoretical one more than practical. Most of the tort cases occur due to the unawareness and lack of intent on the part of the offender. For example : In between years 2010 and 2011, Abu Salek a businessman had misappropriated about Tk.18 crore from Sonali Bank's Cantonment Branch. Salek used a fake address to open an account in the Bank. In the year 2012, the ACC filed 33 cases over misappropriation and salek was accused in most of them. Later ACC passed charges against him identifying as Abu Salek alias Jaha Alam. He was arrested on February 6, 2016 in Narsingdi⁴⁰ . After three years he was released on bail. He have spent three years in Jail without any misappropriation. But here the question is how he will get back his important three years? There is no way to seek compensation for false imprisonment as there is no legal provision for compensation people who are victim of Assault, battery, false imprisonment, intentional infliction of emotional distress, fraud, deceit, trespassing, defamation, accidents are fall under tort law. Incidents related to tort can happen through intention or negligence. The offender is liable under various laws such as Fatal Accident Act, 1885, The Code of Civil Procedure, 1908, The Code of Criminal procedure, 1898, Penal Code, 1860. Transfer of Property Act, 1882 and the Constitution of

⁴⁰ Wrongful Imprisonment of Jaha Alam ACC officials to blame - The Daily Star <https://www.thedailystar.net> › news

the People's Republic of Bangladesh. The victim of tort may get their remedy under these laws, however, it is very difficult for the victim to get their deserving compensation. The tort law will ensure access to justice also assurance to justice. Tort law practice in Bangladesh is very important to prevent Indiscipline, irregularities, mismanagement, corruption, disorder and malpractice followed in the government body and in the public sector as well. We have already experienced low quality mask supply in the corona situation. Our constitution kept a window open under Article 102⁴¹ in a limited extent for the aggrieved party to seek remedy. Tort practice is a must to mitigate multi-dimensional irregularities and malpractice by binding different organs of the government.

The killing of Abrar Ahmed Chowdhury by a running bus⁴² could easily have been filed under tort legislation. If we had a codified tort law, a petition could have been filed for compensation by applying constitutional tort.

In Bangladesh tort law is not introduced yet. In Bangladesh, there are Penal code, Civil procedure, criminal procedure, constitution etc. have short application of tort law. From the above, we can see that it is very essential for every country to adopt tort law, countries like India, Sri Lanka, Nepal, USA, UK etc. have already adopted the tort law.

⁴¹ Article 102 of the Constitution Of Bangladesh – Powers of the High Court Division to issue certain order and directions.

⁴² Abrar Ahmed Chowdhury's Death | The Daily Star <https://www.thedailystar.net> › tagsp

CHAPTER – 5

Conclusion

5.1 Recommendation:

From the above discussion, we can clearly see that tort law is important to developing country like Bangladesh but it requires more enactments to make it more ascertainable. The real thing is the entire law of Torts is founded and structured on morality. We need a codified tort law in our country then the cases of tort law will increase. A codified will make the process much easier. We should encourage people to learn about law of tort and how can that can be helpful to them. To codify the law and make sure the victim will get satisfactory compensation by this law. Bangladesh is a fast growing country. In a fast growing country like Bangladesh, adopting Tort law as soon as possible will make it a better country. Tort law is developing in our country and its importance is increasing day by day. People should learn and fast cope with the law as soon as possible then proper implementation should be possible. People should learn about proper use of this law and then they should be benefited by this law.

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