



Dissertation

On

Compensation on Tort Cases in Bangladesh: Assessing the Adequacy of the Existing Legal Framework and Remedies

Course Title: Supervised Dissertation

Course Code: LAW 406

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Date of Submission:

7 September, 2023

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The dissertation titled “**Compensation of Tort Cases in Bangladesh: Assessing the Adequacy of the Existing Legal Framework and Remedies**” prepared by Maha Rahman, ID 2017-3-66-048 submitted to Dr. Nabaat Tasnima Mahbub, Assistant Professor, Department of Law, for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Acknowledgement

First and foremost, I am grateful to almighty Allah, by whose grace I have been able to come so far. I am also thankful to my respected supervisor Dr. Nabaat Tasnima Mahbub (Assistant Professor, Department of Law, East West University), who assisted me in determining my thesis topic and guided me in this journey, and provided various research supports to conduct my thesis work.

I want to thank all of East West University's Department of Law faculty members for their advice and support throughout my undergraduate career. Finally, I want to thank my family and friends for motivating me at every stage of my life.

Declaration

I, Maha Rahman, do hereby confirm that the research paper titled “Compensation of Tort Cases in Bangladesh: Assessing the Adequacy of the Existing Legal Framework and Remedies” has been prepared by my own findings and efforts. I also declare that this research is my original work and has not been submitted for any other degree or professional certification. Any information or content which was useful in finishing this study is acknowledged and specifically cited.

Signature of the Student

Date:

List of Abbreviation

AD	Appellate Division
HCD	High Court Division
BLD	Bangladesh Legal Decisions
DLR	Dhaka Law Reports
BLAST	Bangladesh Legal Aid and Services Trust
AIR	All India Report
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
PLD	Pakistan Legal Decisions
MACT	Motor Accidents Claims Tribunal
SCMR	Supreme Court Monthly Report
MLD	Monthly Law Digest
Ltd.	Limited
Vs.	Versus

Table of Content

Abstract.....	08
Chapter 1. Introduction.....	09
1.1 Background of the Study.....	09
1.2 Research Question.....	09
1.3 Research Justification.....	10
1.4 Research Methodology.....	10
1.5 Literature Review.....	10
1.6 Limitations.....	10
1.7 Chapter Outline.....	11
Chapter 2. Historical development of tort law and analysis of the concept of compensation law of tort.....	12
2.1 Introduction.....	12
2.2 What is Tort.....	12
2.2.1 Characteristics, Essential Elements and object of Tort.....	13
2.3 Historical evolution of law of torts in British Common Law.....	14
2.3.1The writ system (1250-1800).....	14
2.3.2 The establishment of the legal category of tort (1800-1870).....	15
2.3.3 Modern Tort Law (1870-1980).....	15
2.4 Historical evolution of tort laws in Bangladesh.....	15
2.5 Relevant statutory laws.....	16
2.5.1The Constitution of Bangladesh.....	16
2.5.2 Civil procedure Code, 1908.....	16
2.5.3 Code of Criminal Procedure, 1898.....	17
2.5.4 Penal code, 1860.....	17
2.5.5 Fatal Accident act, 1885.....	17
2.5.6 Vehicles Ordinance, 1963.....	17
2.5.7 Bangladesh labour Act, 2006.....	17
2.5.8 transfer of Property act, 1882.....	18
2.6 Compensation in tort cases.....	18
2.6.1 What is compensation.....	18
2.6.2 Legal right and legal injury.....	19
2.6.3 Legal damages.....	19
2.6.3.1 contemptuous or derisory damages.....	19
2.6.3.2 Nominal damages.....	20
2.6.3.3 Ordinary or Compensatory damages.....	20

2.6.3.4 Aggravated damages.....	20
2.6.3.5 Exemplary or punitive damages.....	20
2.7 Conclusion.....	20
Chapter 3. Tort cases and Courts of Bangladesh.....	21
3.1 Introduction.....	21
3.2 Public/constitutional torts.....	22
3.2.1 Vicarious Liability.....	23
3.2.2 Assault by public authority.....	24
3.3 Private torts.....	25
3.3.1 Vicarious liability and negligence.....	25
3.3.2 Vicarious liability and personal liability.....	25
3.3.3 Punitive damage out of vicarious liability.....	26
3.3.4 Assault	26
3.3.5 Negligence.....	28
3.4 Particular situations that required the use of tort law.....	28
3.5 Similarities in reasoning of judgments.....	29
3.6 conclusion.....	29
Chapter 4. Nature of compensation given by Bangladeshi Court and compensation analysis with Indian and Pakistani	
Jurisdiction.....	30
4.1 Introduction.....	30
4.2 Methods of compensation used by Bangladeshi court.....	29
4.3 Tort cases in India and Pakistan.....	31
4.3.1 Indian tort cases.....	31
4.3.2 Pakistan tort cases.....	33
4.4 The concept of vicarious liability of the States (India and Pakistan).....	34
4.5 Conclusion.....	35
Chapter 5. Recommendations and conclusion.....	36
5.1 Finding.....	36
5.2 Recommendations.....	37
5.3 Conclusion.....	38
Bibliography.....	40

Abstract

Tort law is still in its infancy in modern Bangladesh and is very gradually developing. Tort law is a branch of the law designed to shield citizens from wrongdoing consisting of as This law's goal is to make sure that the wrongdoer must compensate the victim for their losses. Although this law is not codified, the Courts have made some significant rulings that have validated its importance and given it an enormous amount of weight to support numerous scenarios that are quite common in this country. However, as the law is being formed by judges using case law, it may still be unclear if a judge's personal philosophy may affect the case's outcome. In the majority of cases, we can see that the court took into account the victims' damages from every perspective, as it did in India and Pakistan, but those countries' rulings require more analysis and take longer to provide. Even though the court has only entertained a small number of tort claims since there aren't many of them, it has always granted the victim's reasonable requests. In some occasions, however, the court has enhanced the amount where punitive damages were requested. The extent of the drivers' gross negligence and the insurers company's obligation were not eliminated by vicarious liability in Courts perspective. The object of this study is to bring up the issues of legal framework and remedies on tort cases in Bangladesh to understand whether they are adequate or not. It aims to discover the reasoning and methods behind the decisions taken by the judicial bodies in assessing compensation in tortious cases. The study finds that the present legal system relevant to tortious liability in Bangladesh and the judicial reasoning adopted in such cases requires a more nuanced approach.

Keywords: Compensation, Tort, Bangladesh's Court, victim.

Chapter 1

Introduction

1.1 Background of the study

When attempting to comprehend the meaning of tort law from its very beginning, we frequently turn to our knowledge of Common Law customs. Few people in Bangladesh would regard tort law to be a legitimate area of the law. In order to run a civilized society, a harmony of standards must be maintained, and tort law sets the standard for our social practices. Every person is legally bound to maintain the 'Duty of care' in order to avoid tortious liability. According to the Cambridge Dictionary, a breach of duty is when a person fails to take any action for which he is liable in court. One of the four components that make up negligence under tort rules is breach of duty. allegedly resulted from the defendant's failure to provide reasonable care. The term "breach of duty" refers to the failure to exercise the required caution that was expected to be taken when performing the duty. The plaintiff may be entitled to compensation as a result of the defendant's breach of a reasonable standard of care.¹ Compensation under this law can be a huge amount than under any other existing laws. The Courts as there are no codified law, are measuring and framing the law by its ruling. The Court is shaping the law through its own decisions and perception. There can be an arising question, whether the judgment of the Court remained same if it was pronounced by a different judge.

1.2 Research question

To what extent does the legal framework in Bangladesh adequately address the effectiveness of compensation in tort cases?

1.3 Research justification

The essential purpose of this paper is to bring up the issues of legal framework and remedies on tort cases in Bangladesh and whether they are adequate or not. This research is aiming to discover the reasoning and context behind the decisions taken by judicial body in tortious cases. Moreover, what methods are being considered while giving the decisions as to there is no specific statute or any law passed by the parliament to cover this side of legal system. Tort law is governed by a combination of common law principle and statutory law in Bangladesh created through judges and legislature. Therefore, the scale balancing the compensations defers in cases according the rationality of judges and advocates.

¹ Rebecca, L. C., Demystifying the 4 Elements of Negligence (2020) The Journal of Perinatal & Neonatal Nursing < https://journals.lww.com/jpnnjournal/citation/2020/04000/demystifying_the_4_elements_of_negligence.6.aspx > accessed 6 September 2023

1.4 Research methodology

The nature of this research is qualitative-oriented where the method focuses on the resolution of the connections. Statutes, judicial decisions, case are considered primary sources while conducting the research. Regarding the secondary resources books, national and international journals, online journals, newspaper article websites, scholars' blogs are considered.

1.5 Literature Review

Grounds of compensation under Tort is currently a concerning issue in Bangladesh, victims under this law are even not aware how to properly take shelter under this law. Different scholars and writers have expressed their concerns regarding tort and its extended compensations that can be given to the victims. Compensation was prioritizing by Faeser "Tort is an infringement of a right in rem of a private individual giving of compensation at the suit of the injured party"². According to Keeton and Keeton in their book define torts as "Tort law is a body of law concerned with granting or denying claims of individuals or impersonal legal entities against each other for the award of damages or other forms of legal reliefs"³. It exposes the fact that, in contrast to other areas of law, Bangladesh's tort system is still largely unexplored for not being codified. The amount of compensation can defer a lot for mere distinction if the judge in his rationality thinks that way moreover there are very few tort cases to shape the framework of its jurisdiction.

1.6 Limitations

I ran into some restrictions while conducting this research. If there is no time constraint, it might be able to deliver an optimal outcome. Another one of the primary constraints is a lack of resources, and I was unable to compile enough proper materials on the sole topic. In Bangladesh, there aren't enough study resources or current court cases that deal with these issues. The study may be more well-structured without these restrictions.

1.7 Chapter Outline

This dissertation consists of five chapters. Chapter 1 titled 'Introduction' elongated the background of the study, research question, justification, its methodology, literature review and limitations of the paper. Chapter 2 demonstrates the historical development of tort law and analyses the concept of compensation in tort cases. This chapter discusses the definition of tort, its Characteristics, Essential Elements and object, historical evolution, relevant statutory laws, compensations and its elements, legal injury legal rights of tort. Chapter 3 contains an analysis of tort cases brought and disposed of by courts of Bangladesh. This chapter presents public, private tort cases filed and entertained by Courts, the grounds the Courts consider while awarding judgments and what recent factors could have been brought under it. Chapter 4 discusses nature of compensation given by

² Shubham Choudhary, Definitions of Torts and its Characteristics (2019) Ipleaders <
<https://blog.ipleaders.in/definitions-of-torts-and-its-characteristics/>> accessed 12 September 2023

³ ibid

Bangladesh Court and makes a comparative analysis with Indian and Pakistani jurisdictions. This chapter presents argument for the effectiveness of compensation and its nature also similar cases that were dealt in India and Pakistan. Chapter 5 finds some lack of law and effective mechanisms for awarding compensations; thus, this chapter gives some recommendations to prevent tortfeasor avoiding compensations.

Chapter 2

Historical Development of Tort Law and Analysis of the Concept of Compensation in Law of Tort

2.1 Introduction

Tort is a civil wrong,⁴ when any person suffers loss or harm for another person's conducting breach of any duty fixed by law and the appropriate remedy for such an act or omission is a suit for damages. The exact scope of this branch of law is still unsettled as it is in the process of continuous evolving. This law provides pecuniary compensation for injuries to person and property from the wrongdoer but breach of contract, breach of trust or other merely equitable obligations are excluded. Tort law took a massive period to evolve as most of its form was made with the arising needs of society hence case laws, court decisions, customs, and principles of jurisprudence is the primary source of this law⁵. British empire brought common law and formal tort law to sub-continent for ruling but even after so many years of independents this law is not made codified.

2.2. What is tort

The word tort is of French origin which was derived from the word may also be traced to the Latin term 'tortam' meaning 'to twist'. In French the meaning of the word 'tort' stands 'wrong'. Thus, tort implies conduct that is twisted or wrongful.⁶ The exact scope of this branch of law is far from being settled. Due to its haphazard development through case law and still being developing, an accurate and exhaustive definition is absence.⁷ Sir John Salmond defines tort as a civil wrong for which remedy is a common law action for unliquidated damages but not absolute outcome of the breach of a contract or the breach of a trust or other merely equitable obligations.⁸ According to the acumen of Percy Henry Winfield's definition which is appreciated by some other writers as it has undertaken most of the essentials of tort,⁹ tortious liability arises from the breach of the duty predominantly adjusted by law where the duty is regarding persons generally and its breach is redressible by an action for unliquidated damages.¹⁰ This theory supports the principle of '*ubi jus ibi remedium*' which stands whenever a loss is caused to any person there is a remedy available to him to get compensation for the damages caused by the wrongdoer.¹¹ In this regard, Lord Denning

⁴ Ashpreet Kaur, Tort as a Civil Wrong (2019) Ipleaders <<https://blog.ipleaders.in/tort-as-a-civil-wrong/>> accessed 30 July 2023

⁵ Prachi Mangla, The Need to Codify Law of Tort (2022) IJRASET < <https://www.ijraset.com/research-paper/the-need-to-codify-law-of-tort> > accessed 3 August 2023

⁶ NOSHIRVAN H. JHABVALA, THE LAW OF TORTS (29th ed, Bombay: N.M. Tripathi & Co., 2016) 1.

⁷ G.S. PANDE, THE LAW OS TORTS (4th ed, Allahabad Law Agency, 2016) 2.

⁸ ibid

⁹ JOHN FREDERIC CLERK, Clerk & Lindsell on Torts (13th Ed, Sweet & Maxwell, Limited ,1970) 1.

¹⁰ 'Winfield Theory of Law of Torts' (2022) LEGAL KATTA < <https://legalkatta.in/winfield-theory-of-law-of-torts/>> accessed 30 July 2023.

¹¹ ibid

of the House of Lords came up with the finest phrase to describe the tort which is "the province of tort is to allocate responsibility for injurious conduct."¹²

2.2.1 Characteristics, Essential Elements and object of Tort

Tort is a civil wrong,¹³ in this the party who has been injured brings civil action against the wrongdoer. Unliquidated damages are the appropriate remedy for a civil injustice, and the matter in question must be sued by the individual involved however in cases of criminal wrongs justice is served by punishing the offender.¹⁴ Tort is an infringement of a right in rem which is applicable to the entire world, against the society as a whole.¹⁵ The remedy for tort is equitable relief to the injured and unliquidated damages that are calculated by the court in accordance with the loss caused. tort is an uncodified law where it does not have any written statutes or acts, and it has to rely on precedents and case_laws, court decisions, customs, and principles of jurisprudence.¹⁶ To not cause tort Individuals are obligated by the law to maintain rationality in their actions, which may potentially harm others.¹⁷

An injury here means violation of a legal right. The legal maxims '*Injuria sine Damno*' and '*Damnum sine Injuria*' encapsulate the damage and injury part¹⁸. In the case of *Ashby v. White*,¹⁹ The plaintiff, an eligible voter, was unlawfully denied his vote by the defendant, despite not experiencing any losses, thereby violating his legal right to vote. The maxim '*Injuria sine Damno*' meaning Injury or infringement of a legal right without any actual Damage that caused loss suffered by the plaintiff. The Gloucester Grammar School²⁰ case is an example of maxim '*Damnum sine Injuria*' meaning damage to a person in absence of a legal injury or violation of any legal right. Tort law aims to compensate victims for violated rights, increase public awareness, and allow individuals to exercise their rights.²¹

The plaintiff must first demonstrate the defendant's obligation requiring a duty of care to the plaintiff in order to establish the defendant's carelessness based on the consequences of his actions. Due to the lack of a comprehensive definition for the duty a landmark judgment in a

¹² Shubam Chowdhury, 'Definitions of Torts and its Characteristics' (Ipleaders, April 27) <<https://blog.ipleaders.in/definitions-of-torts-and-its-characteristics>> accessed 1 August 2023

¹³ *Ashpreet Kaur*, Tort as a Civil Wrong (2019) Ipleaders <<https://blog.ipleaders.in/tort-as-a-civil-wrong/>> accessed 30 July 2023

¹⁴ NOSHIRVAN H. JHABVALA, THE LAW OF TORTS (29th ed, Bombay: N.M. Tripathi & Co., 2016) 5.

¹⁵ Talukder Rasel Mahmud, LAW OF TORTS (2nd ed, Eastern Law Publications, 2017) 7.

¹⁶ Prachi Mangla, The Need to Codify Law of Tort (2022) IJRASET <<https://www.ijraset.com/research-paper/the-need-to-codify-law-of-tort>> accessed 3 August 2023

¹⁷ Mrutyunjay Saramandal, Law Of Torts, Definitions, Objectives And Elements of tort (2021) The Legal State <<https://lawsuperior.com/law-of-torts-definitions-and-essential-elements/>> accessed 2 August 2023

¹⁸ *ibid*

¹⁹ 92 ER 126

²⁰ (1410) YB 11 Hen IV, fo. pl. 201, 23, f. 47, pi. 19

²¹ A.S.M Tariq Iqbal, 'Adaptability of the Law of Tort in Bangladesh: An Interpretative Approach' (2014) *Banglavisision Research Journal* vol. 14, No. 1 <

https://www.academia.edu/32044022/Adaptability_of_the_Law_of_Tort_in_Bangladesh_An_Interpretative_Approach> Accessed 15 August 2023

Scottish case titled *Donoghue versus Stevenson*²². The concept of duty of care, which serves as the cornerstone of negligence law in governments that uphold civil law, is also drawn from the British law of torts.²³ As held by Lord Macmillan in *Donoghue v. Stevenson*:²⁴

"The cardinal principle of liability is that the defendant party should owe to the party complaining a duty to take care and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty."

2.3 Historical Evolution of Law of Torts in British Common Law

English law recognized the right of a victim for unjustified physical attack as far back as 1250 AD to sue the attacker for damages. The 1500 law recognized torts like medical malpractice and defamation, defining wrongs and granting victims legal relief. However, tort law has evolved significantly, with courts and lawmakers creating new torts and eliminating others, and the litigation processes have undergone significant modifications.²⁵

2.3.1 The Writ system (1250- 1800)

Tort law has been a feature of English law (and later American law) for centuries, even though it wasn't given the label "tort" until the middle of the eighteenth century. The English royal government's Chancery started disseminating a document known as the '*writ of trespass vi et armis*' means "with force and arms" in the late 1200s. the king issued a 'writ of trespass vi et armis', allowing victims to demonstrate their trespass and receive compensation. During that time, the term was used more broadly to mean wrong or transgression.²⁶ In the 1616 decision of *Weaver v. Ward*,²⁷ Plaintiff and Defendant were taking part in a military training exercise when the former unintentionally shot Plaintiff. The defendant contended that he should not be held accountable because he was engaged in a legal activity and had behaved without intending to cause any harm to the plaintiff in the battery lawsuit. The English Court of Common Pleas ruled that unintentional forced harm under writ of trespass can be justified if the defendant can prove the plaintiff's injury was an "inevitable accident" without fault. that happened "utterly without his fault".

Many lawsuits begin as pre-tort interactions, but victims may apply the case writ to hold a stranger. The renowned historian J. H. Baker provided a pioneering instance of such a claim. In the case of *Loghton v. Calys*²⁸ a woman suffered significant injuries when a pile of logs that the defendant had negligently ignored to preserve on land close to a public way toppled into her as she was passing by. As stated by Baker, the writ's claims were adequate to support a trespass claim in

²² (1932) A.C.562.

²³ Johnson, Eric. E., *Tort: Cases and Context* (1st ed, elandell Press, 2015) 38.

²⁴ (1932) AC 562

²⁵ *ibid*

²⁶ JOHN C.P. GOLDBERG AND BENJAMIN C. ZIPURSKY, *The Oxford Introductions to U.S. Law TORTS* (1st ed, Oxford University Press, 2010) 9-11.

²⁷ (1616) 80 Eng. Rep. 284 (K.B.).

²⁸ J.H. Baker, *An Introduction to English Legal History* 409 n.40 (4th ed. 2002).

the case. The case writ would later be enlarged to allow other proceedings, in the 1500s. the word 'tort' was first used for the first time in an English case, *Boulton v Hardy*.²⁹

2.3.2 The establishment of the legal category of tort (1800- 1870)

The early 1800s saw the collapse of the direct/indirect distinction, the writ system was rejected, leading to the introduction of the term "torts" in the late 1800s, referring to wrongs involving non-harmful obligations, apart from those established by agreement., aside from obligations established by agreement.³⁰

2.3.3 Modern Tort Law (1870-1980)

The transition from "trespass" and "case" to the new category of "torts" most likely omitted any substantive adjustments to the law. The wrongs that were recognized by tort law in 1870 did not significantly differ from those that could be sued for under trespass writs in 1770. However, as the 20th century drew near, tort law began to undergo some of major modifications in its nature, significance, and setting as those we now can see.³¹

2.4 Historical Evolution of TortLlaws in Bangladesh

The basic principles of tort laws were developed through the practice of common law of England. In Bangladesh tort law is not introduced yet but throughout legal system of Bangladesh, tort law plays an important role. As tort was present in India before the independence of Pakistan, people of bangol did heard tort. There is no doubt that this misconception is raised because of we have no fundamental structure of how tort law should work. In Bangladesh penal code, code of civil procedure, code of criminal procedure, there are short application of tort law.³² The first case was *Bangladesh Beverage Industry v. Roswan Akhter*³³ (March 2003), in which the corporation was mandated to pay Tk 1.7 crore for damages to the family of the victim who passed away as a result of the delivery van driver's careless and reckless driving. According to personal tort law, financial recompense is ensured in the context of Bangladesh. Personal tort law can be used to pursue monetary damages for tort-related wrongs perpetrated by one person against another. Here it was vicarious liability, the term vicarious liability denotes the strict liability which a person may incur for damage caused to a claimant by the tort of someone under his control, such as an employee.³⁴ This law is still in its process to discover completely what the developed countries has put its use

²⁹ 1597 Cro. Eliz 5.

³⁰ JOHN C.P. GOLDBERG AND BENJAMIN C. ZIPURSKY, *The Oxford Introductions to U.S. Law TORTS* (1st ed, Oxford University Press, 2010) 27.

³¹ *ibid*

³² Tariq Iqbal, 'Adaptability of the Law of Tort in Bangladesh: An Interpretative Approach' (2014) *Banglavisian Research Journal* Vol. 14, No.1, 164.<

https://www.academia.edu/32044022/Adaptability_of_the_Law_of_Tort_in_Bangladesh_An_Interpretative_Approach> Accessed 14 August 2023

³³ HC 62 DLR 483

³⁴ Rogers, W. V. H., *Winfield and Jolowicz on Tort*, (19th ed, Sweet and Maxwell, South Asian Edition, 2010), London, 943.

in verities scenario which we only now can be anticipate to optimize in our near future.³⁵ The judicial discretions are shaping this laws gravity to pull most of the cases where the word ‘negligence’ was being used with mere valuation.

2.5 Relevant Statutory Laws

In Bangladesh, there has never been a system of tort laws. In Bangladesh, tort law is governed by a combination of **common law principles and statutory law**. However, under the enacted legislation, certain torts can be enforced. Those are:

2.5.1 The Constitution of Bangladesh

Under Article 37, 38, 44 and 102 of the Constitution of the People's Republic of Bangladesh we can relate the law of Tort.³⁶ Article 44 and 102(1) of Bangladesh Constitution provides provision regarding constitutional tort specially. In case **Bangladesh Beverage Industries Ltd. v. Rowsan Akhter**³⁷ The defendant Corporation was ordered to pay 1.7 crores in damages following a lawsuit brought by the family of a journalist who was killed in 1989 as a result of the negligent driving of the company's delivery van driver.

2.5.2 Civil Procedure Code, 1908³⁸

Section 91 of this code says in case of public nuisance the Attorney General or two or more persons who has taken the consent of Attorney General in writing may file a suit. There are three remedies in this section declaration, an injunction, on other remedy that may be appropriate under the circumstances. Furthermore section 9 and 151 the Courts are free to grant relief of any kind in the light of the inherent authority.

2.5.3 Code of Criminal Procedure,1898³⁹

Section 545 of this code says about compensation but the scope of it is minimum as the compensation will be within and cannot exceed the amount of fine awarded by the Court. In case *Thakorebai Shrinivas Khemraj vs The Central Bank of India*.⁴⁰

2.5.4 Penal Code,1860

We can relate terms of tort law with this code as Section 44 of the Penal Code, 1860 which describes “Injury”. Section 268 which describes guilty of a public nuisance, Sec 352-358 provides punishment for assault or criminal force also Sec 268 which states that a common nuisance is not excused on the ground that it causes some convenience or advantage. Section 499-502 which

³⁵ Tushitta Murali, Judicial precedent is a source of Law (2020) Ipleaders < <https://blog.ipleaders.in/judicial-precedent-source-law/> > Accessed 25 August 2023

³⁶ The Constitution of the People's Republic of Bangladesh

³⁷ (2003) 69 DLR, 129

³⁸ Code of Civil Procedure, 1908 (Act No. V of 1908).

³⁹ the Code of Criminal Procedure, 1898(Act NO. V of 1898)

⁴⁰ 45 BOMLR 976

describes defamation and there are many other relevant sections which enforces tort law in Bangladesh.⁴¹

2.5.5 Fatal Accident Act, 1885

If someone dies as a result of an accident, a family member may sue the party at fault or the person seeking compensation. This action solely involves a tort claim. The primary flaw with this law is that it only applies to surviving family members of the deceased According to section 1(A), Fatal Accident Act, 1865.⁴²

2.5.6 Vehicles Ordinance, 1963

Motor vehicles owners have to pay compensation if there is no insurance or inadequate insurance because there is 'no fault liability' or strict liability of the owner under section-119(1) and under section 127 to claim compensation there was a tribunal named 'Motor Accident Claim Tribunal' thus it is much easier get compensation for a victim through the court.⁴³ It was used in the case Catherine Masud vs Kashed Mia and others⁴⁴ but this law is not enforceable on this land anymore.

2.5.7 Bangladesh Labour Act,2006⁴⁵

this law has very minimum connection with tort law as it under 79-88 gives some particular measures regarding the employer's health and safety are guaranteed. According to this rule, employees must be made aware of any procedures that could be hazardous to their health. Women employees are not permitted to use hazardous equipment near them.

2.5.8 Transfer of Property Act, 1882⁴⁶

under section s 67 and 106 Tort can be applied, In the case of Hasina Vs Haji Md. Ekramul Hoque here the plaintiff gets the chance for claiming torts in his case.

2.6 Compensation in Tort Cases

A legal injury is a violation of a legal right under Tort, the legal injury usually causes financial harm to the victim, such as the cost of repairing or replacing something or the cost of treatment for some physical injury. Due to the fact that a legal injury typically results in financial harm to the victim, justice mandates that the person who was injured be allowed to obtain monetary compensation from the person who committed the tort for the financial harm brought on. Yes, in most cases, tort law does offer monetary compensation for the financial harm produced by a tort law infringement.

⁴¹ Penal Code, 1860 (Act No. XLV of 1860).

⁴² Fatal Accidents Act, 1855 (Act No. XIII of 1855)

⁴³ Vehicles Ordinance, 1963

⁴⁴ 67 DLR 572

⁴⁵ Bangladesh Labour Law, 2006

⁴⁶ transfer Of property Act, 1882 (Act No.4 of 1882)

There are two types of remedies in tort law 1. Judicial Remedies. 2. Extra- Judicial Remedies. In judicial remedies there is damages. Compensatory damages, usually referred to as actual damages, are financial compensation granted by a court considering the loss a party experienced also was held in case *Birdsall v. Coolidge*.⁴⁷ Mostly Based on the plaintiff's shown harm, loss, or injury, the amount awarded is determined. Courts often take into account the fair market value of lost wages, income, and unavoidably incurred expenses when determining compensatory damages. The application of this rule is varying since it is challenging to put a monetary value on these immaterial variables. Courts may also impose damages for emotional distress. Punitive damages might also be granted in cases where the defendant acted very carelessly or maliciously.⁴⁸

2.6.1 What is Compensation

Compensation is a fixed amount of money given by the court from the wrongdoer to the victim. Obtaining monetary compensation from the defendant in a civil lawsuit is intended to make up for any wrongs committed against the plaintiff.⁴⁹ Anyone who has experienced financial losses or harm as a result of another party's acts is legally entitled to demand this compensation.

2.6.2 Legal right and legal injury

We refer to rights as the parameters of acceptable behavior within a particular domain. Legal rights are fundamental human rights that are upheld by the state because they are universally acknowledged to be essential for the advancement of enlightened societies. A moral or natural right is different from a legal right in that the former is recognized and protected by law, whilst the latter may or may not.⁵⁰

A legal injury is a harm suffered by a person due to some act or omission done by another person without malice intention (but in some cases we can see mens rea). When any person makes a breach of legal duty which led to the violation of a legal right of another, we may call it a legal injury as the right which was violated was conferred by the State on all of its citizens.⁵¹

2.6.3 Legal damages

The cardinal remedy for tort is damages, roughly the damages are known at the time of conducting tortious act of commission or omission. These damages are referred as unliquidated damages which are decided by the court depending on facts and merits of the particular case, some different kinds of damages are-

⁴⁷ 93 U.S. 64 (1876)

⁴⁸ "compensatory damages| Wex | LII / Legal Information Institute" (2022) Cornell Law School < https://www.law.cornell.edu/wex/compensatory_damages > Accessed 16 August 2023

⁴⁹ Julia Kagan, Compensatory Damages: Definition, Types, and Examples (2022) investopedia < <https://www.investopedia.com/terms/c/compensatory-damages.asp> > Accessed 21 August 2023

⁵⁰ Adv Hemant More, Introductions to Legal rights (2023) The Legal Quotient < <https://thelegalquotient.com/jurisprudence/legal-rights/2274/>> Accessed 20 August 2023.

⁵¹ Talukder Rasel Mahmud, LAW OF TORTS (2nd ed, Eastern Law Publications, 2017) 6-7.

2.6.3.1 Contemptuous or derisory damages

When the plaintiff moves the court on a technical legal ground without moral justification these damages are awarded, there damages are very little in number. In case *Grobbelaar v News Group Newspapers Ltd*⁵² the court thought that the action should not have been brought, a very small sum of damages was awarded although the claimant was technically entitled to succeed.

2.6.3.2 Nominal damages

When there is injury without a loss this damage is awarded. We can see it in *Ashby v White*.⁵³

2.6.3.3 Ordinary or Compensatory damages

When damages are awarded to the extent of loses as a monetary compensation court regards pecuniary suffered loses along with social disadvantage resulting from the wrong, mental pain and suffering. An example can be seen in *Lim v. Camden & Islington Area Health Authority*⁵⁴ case.

2.6.3.4 Aggravated Damages

This compensation is the increased amount of compensation awarded by the court with its discretion when it finds the manner of commission of tort is intentional. *Thompson v Metropolitan Police Commissioner*⁵⁵ The case involved claimants who were assaulted, assaulted, and abused by police officers, resulting in assault, personal injury, malicious persecution, and wrongful imprisonment, both receiving aggravated damages.

2.6.3.5 Exemplary or punitive damages

Punitive damages are awarded to punish defendants for egregious behavior, influence them, or prevent future offenders. They are often awarded when compensatory damages are insufficient, not compensating the plaintiff. Although the purpose of punitive damages is not to compensate the plaintiff but to create a 'Deterrent' for future offenders. In *Shri Bhim Singh v State of J&K*⁵⁶ Shri Bhim Singh was arrested under Section 153-A of the Ranbir Penal Code at the Police Station Pacca Danga, Jammu with acquisition of he had delivered an inflammatory speech at a public meeting. The petitioner claimed that neither the magistrate nor the sub-judge had seen him. Doctor hadn't checked him and that the police had handled him cruelly prohibited from voting during the assembly's voting session. In case *Kuddus v. Chief Constable of Leicestershire*⁵⁷ No cases of misconduct in public office had ever resulted in such favors prior to 1964, but it did not stop such an award from occurring presently.

⁵² (2002) UK UL 40, (2002) 1 WLR 3024

⁵³ 92 ER 126

⁵⁴ (1980) AC 174 at 187

⁵⁵ (1998) QB 498

⁵⁶ AIR 1986 SC 494

⁵⁷ (2002) UKHL 29

2.7 Conclusion

Despite the fact that this law is not codified, Bangladesh currently deals with torts using various statutes that are similar. Under this law, compensation is a broad topic that deals with a variety of situations and injuries. This law can be easily formed in Bangladesh if the judges and attorneys have the necessary information and preference because it has been around for a very long time.

Chapter 3

Tort cases and Courts of Bangladesh

3.1 Introduction

It clearly demonstrates how, in contrast to other legal disciplines, tort law in Bangladesh is still for the most part an undiscovered ground. There is a tendency among lawyers to completely disregard such a crucial branch of law, which deals with the remedies that any person can claim for his suffering of an injury caused by any wrongdoing committed by other people or public authorities, because it is being treated with such (disregard). Hence there are very few cases under tort law in Bangladesh⁵⁸. Tort falls under private law when private individuals are involved, but can be brought under public law when the tortfeasor is a public authority. Public figures can be held liable under private tort law, but the process is complex. In Zihad's case⁵⁹ the question arose whether CCB Foundation has locus standi to file the instant writ petition in the form of public interest litigation agitating the cause of death of Zihad due to the alleged negligence of the respondents. In this case they had the right to sue under article 102, also in other cases we can see the rules to file a civil litigation is being followed with this field. The person who has bare minimum interest with the damage can be represented as one of the parties as we can see the mother of deceased in Catherine Masud case⁶⁰ as one.

3.2 Public/Constitutional Tort

In cases involving constitutional torts, the aggrieved party only needs to cite the relevant constitutional articles—in the case of the Bangladeshi Constitution, that would be Article 102 and mostly violation of articles 26- 47A—and provide evidence of the government official or public authority who violated the aggrieved party's constitutional rights.⁶¹

3.2.1 Vicarious liability

CCB Foundation Vs Government of Bangladesh⁶² in this case Zihad, a four-year-old child, was playing in the Shahjahanpur Railway Colony playground when he fell inside the 16-inch-deep pit that Bangladesh Railway and the WASA administration had abandoned. The Bangladesh Fire Service conducted a rescue operation, but after hours of efforts, they found no one inside the pipe. later a group of volunteers pulled the dead boy's body. The CCB foundation filed a writ petition under Article 102 of the Constitution, this is a case of constitutional tort. CCB foundation being a non-profit and charitable organization had the locus standi recognized as 'any person aggrieved' according to Article 102 of the Constitution. The inquiry into the negligence of authorities

⁵⁸ Sadman Rizwan Apurbo, Development of Tort Law in Bangladesh and Recent Case Decisions (2018) BDL D Bangladesh Law Digest < <https://bdlawdigest.org/tort-law-in-bangladesh.html> > accessed 14 August 2023

⁵⁹ 278 5 CLR (HCD) (2017),

⁶⁰ (2015) 67 DLR 527.

⁶¹ Malik Fariha Mehnaz, Concept of Constitutional Tort in Bangladesh (2021) Law Legum < <https://lawlegum.com/constitutional-tort-concept-in-bangladesh/> > accessed 15 August

⁶² 278 5 CLR (HCD) (2017),

involved multiple parties, and each negligence was individually examined by the Court. the negligence of the Railway Authority was proved with the doctrine of tort ‘*Res Ipsa Loquitur*’ means ‘the thing speaks for itself’. The court ruled that a claim for compensation against any public authority is not barred by the Constitution of Bangladesh, as Article 146 does not distinguish between sovereign and non-sovereign acts.⁶³ The High Court Division considered it has the authority to determine the appropriate amount of compensation in cases where basic rights Article 32 have been violated. The court set the amount of compensation at BDT 20 lakh, of which BDT 10 lakh will be paid by each of Bangladesh Railway, Bangladesh Fire Service, and Civil Defense considering the socio-economic and keeping in view of applicable laws of the country.⁶⁴

The case establishes a landmark precedent in Bangladesh, where public authority bodies are held liable for employees' negligence through constitutional torts and strict liability, establishing a victim's right to compensation. In **Bilkis Akhter Hossain vs Secy. Ministry of Home**⁶⁵ claim under public law for compensation in case of infringement of human/fundamental rights and freedom was recognized.⁶⁶ Despite the fact that there is no explicit provision in Article 102 of the Constitution for awarding costs and compensation, the High Court Division consistently follows long-standing customs, and it is at its discretion whether to award costs in every writ case. This is because the High Court Division exercises its own distinctive original jurisdiction, and because it has the authority to make any order it sees fit and proper. Now this case serves as a precedent for tort cases.⁶⁷

In **Habibullah Khan v Azaharuddin**⁶⁸ and in this case thus, despite the HCD awarding the petitioners compensatory relief because of the wrongdoing of public authorities with malicious action by a Minister in the earlier case and unlawful imprisonment in the latter instance, the AD overturned both rulings. While hearing the appeal in Habibullah Khan, the AD makes the following observation: "awarding of compensatory costs is no doubt a matter of discretion for the Court, but it must be exercised judiciously."⁶⁹ The type of remedy that may be granted is not specified by the Constitution. Therefore, it has been given to the HCD to approach the remedy in accordance with the circumstances of a certain instance. This was stated in the Bangladesh vs.

⁶³ Raihan Rahman Rafid, When negligence costs lives (2018) DHAKA TRIBUNE < <https://www.dhakatribune.com/opinion/op-ed/134851/when-negligence-costs-lives>> accessed 14 August 2023

⁶⁴ Barrister Halim, First ever Public Law Compensation Judgment in Bangladesh: Children's Charity Bangladesh Foundation Vs. Govt. and Ors (2017) Academia.edu < https://www.academia.edu/36448704/First_ever_Public_Law_Compensation_Judgment_in_Bangladesh_Childrens_Charity_Bangladesh_Foundation_Vs_Govt_and_Ors> accessed 17 August 2023

⁶⁵ [1997] HCD, 2 BLC (HCD).

⁶⁶ Professor K. Shamsuddin Mahmood, the role of foreign judgements to enrich domestic legal regime (2020) The Daily Star < <https://www.thedailystar.net/law-our-rights/news/the-role-foreign-judgements-enrich-domestic-legal-regime-1957721> > accessed 18 August 2023

⁶⁷ Nafiz Ahmed, Safeguarding our rights (2018) Dhaka Tribune < <https://www.dhakatribune.com/opinion/op-ed/143495/safeguarding-our-rights> > accessed 18 August 2023

⁶⁸ (1983) 35 DLR 72 (AD).

⁶⁹ 2 278 5 CLR (HCD) (2017),

Ahamed Nazir case,⁷⁰ and the Appellate Division of the Supreme Court of Bangladesh has adopted this view.⁷¹

3.2.2 Assault by public authority

State vs. Md Moinul Haque and Others⁷² a minor girl, Yasmin was gang raped by members of the Bangladesh police when she was under their care, the HCD issued some directives that outlined a rape victim's right to compensation: "The victim of rape should be compensated by giving her half of the property of the rapist(s) as compensation with the goal to rehabilitate her in the community." But in most cases which could had been filed under tort law was not, hence the compensation in the judgment is bare minimum as 1 lac as well as in case of Rehana Begum.

3.3 Private tort

When the parties at dispute are private individuals and the law which covers it is not the direct implication of grundnorm of the state then it will be consider as private tort.

3.3.1 Vicarious liability and negligence

In **Bangladesh Beverage industries Ltd v Rowshan Akhte and others**,⁷³ Mozammel Hossain Montu was a well-known journalist, news reporter. On December 3, 1989, Mr. Montu was struck by the appellant's minivan as he proceeded to cross the street after buying a pack of smokes from a store along the sidewalk. The vehicle then sped off down the wrong side of the street. In a collision, suffered fatal head and facial injuries that led to hemorrhage leaving behind his wife, two boys, parents, brother, sister, and other relative at 44.⁷⁴

The plaintiffs filed a money suit, seeking a total of Taka 3,52,97,000 under the following headings: compensation for (1) loss of potential earnings (2) harm done to the children by depriving them of their father's love, care, and nursing (3) harm done to the widow by depriving her of her husband's love, treatment, and nursing (4) loss of post-retirement earnings (5) harm done to the sons by depriving them. With the evidence given by the 3 eye witnesses that the minivan came from the wrong side of the road Thus, the District Judge decreed the suit in favour of the plaintiffs and awarded the compensation. The appellants retained that the compensation judgment for injuries must be calculable, but the District Judge's finding was 'issued on emotion' and without any justification. The HCD remains same and connects Bangladesh Beverage industries with the minivan driver by vicarious liability even though course of employment was absent when the accident took place but reduced the amount of compensation.⁷⁵

⁷⁰ [1975] AD, 27 DLR (AD).

⁷¹ Mahmudul Islam, Constitutional Law of Bangladesh (3rd ed, Mullick Brothers 2012) 213.

⁷² (2001) 21 BLD (HCD) 465.

⁷³ [2010] HCD, 62 DLR (HCD)

⁷⁴ Taqbir Huda, Vicarious Liability of Employers in the Law of Tort: Deciphering Bangladesh Beverage Industries vs. Roswan Akhter and Others (2016) Academia.edu vol. 16, No.2, <https://www.academia.edu/36900576/Vicarious_Liability_of_Employers_in_the_Law_of_Tort_Deciphering_Bangladesh_Beverage_Industries_vs_Roswan_Akhter_and_Others > accessed 16 August 2023

⁷⁵ The Daily Star, Symposium on recent tort law judgments held at BILIA (2017) The Daily Star <<https://www.thedailystar.net/law-our-rights/symposium-recent-tort-law-judgments-held-bilia-1480177>> accessed 18 August.

District Court considered one more ground 'Damage and Shock Caused to The Deceased's Other Family Members by The Premature Death' along with the claimed five and awarded the entire asked sum but HCD reduced it to 2,01,47,008 only maintaining the amount of Loss of Potential Earnings and Loss of Post Retirement Earnings. Despite a 27-year legal process, victim's wife has yet to receive her money from the corporation, despite the Appellate Division's ruling in her favor.⁷⁶

3.3.2 Vicarious liability and personal liability

In **Catherine Masud vs Md. Khurshed Miah and others**⁷⁷ The fact was that on August 13, 2011, Tareq Masud was on his way in a Microbus from Manikgonj to Dhaka with nine other people. When the microbus "joka" reached the location on the Dhaka Aricha Highway, it collided with the "Chuadanga Deluxe Paribahan" bus in the opposite direction. Five passengers on the microbus died instantly as a result of the accident, and those who survived were all brought to the hospital. The issue of whether the accident was the bus driver's responsibility and whether the owners would be held vicariously accountable for that arose.⁷⁸

The amount of compensation was claimed in nine grounds namely (1) loss of Income (2) Loss of Dependency suffered by Claimant Nos. 1 [deceased wife] and 2, the minor (3) Loss of Dependency suffered by Claimant No. 3, represented by Abu Tayab Masud (4) Loss of Future Advancement (5) Loss of Estate (6) Loss of Love & Affection suffered by Claimant Nos. 1 and 2 (7) Medical Expenses of Claimant No. 1 (8) Funeral Expenses (9) Damage to Property (Microbus) in total sum Tk. 9,94,04,646/-.⁷⁹ HCD approved Tk. 4,61,75,452/- on Loss of Dependency suffered by petitioner-claimant, Loss of Love and Affection, Funeral Expenses, Funeral Expenses, Damage to the Property but the other remote grounds were denied and some were reduced. the insurance company was instructed to pay Tk. 80,000/-, Md. Jamir Hossain, Driver of the Bus was directed to pay Tk. 30,00,000/- as has some property and a house but not in Dhaka. The controller-supervisor-operators and owner of the Bus were respectively, pay equally the remaining amount of Tk. 4,30,95,452/-.⁸⁰ The impact of the view of compensation taken by the Pakistan Supreme Court in the case of Sri Manmath Nath Kuri vs. Mvi. Md. Mokhlesur Rahman and another and the previous similar case of Bangladesh of Rawshan Aktar⁸¹ was taken in account while deciding this case.

⁷⁶ Naima Haider, Development of the Laws of Tortious Liability in Bangladesh (2021) [Dhaka University Law Journal/Heinonline]<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/dkauvylw32&div=15&id=&page=> accessed 18 August.

⁷⁷ (2015) 67 DLR 527

⁷⁸ Shahriar Islam Shovon, The Probability of Tort Law in Bangladesh (2022) bdreports24 <<https://bdreports24.com/the-probability-of-tort-law-in-bangladesh/>> accessed 18 August.

⁷⁹ Catherine Masud vs Md Kashed Miah (2021) SCRIBD <<https://www.scribd.com/document/492405346/Catherine-Masud-vs-Md-Kashed-Miah>> accessed 19 August.

⁸⁰ 10 SCOB [2018] HCD

⁸¹ [1975] AD, 27 DLR (AD).

3.3.3 Punitive damage out of vicarious Liability

In **British American Tobacco Bangladesh (BATB) Company Ltd v. Begum Shamsun Nahar**⁸² the BATB's first permanent female employee, Shamsun Nahar, was authorized as the "Lady Confidential Typist" in 1980. From the start, her two coworkers gave her inferior attention. The victim once opened the door to a restroom after asking permission to use it and found Mr. Ezaz Chowdhury, an employee of the company, in a highly intimate relationship with a young married woman who was both familiar to her and everyone else in the workplace. She filed suit to claim damages in the sum of Tk. 2,50,038,000.

The SC remain in her favour on grounds that the victim had been sexually harassed and that the company had not taken initiative to assist the victim once they received her complaints.⁸³ Sexual harassment puts psychological strain on the victim, and it is simple to establish tortious liability when psychological pressure is caused. To prove sexual harassment, there need only be consequences—no direct engagement of the maintenance personnel or agent is required. In this respect, the victim is entitled to compensate damages for both their physical anguish and any sexual harassment they may have experienced.⁸⁴ In addition, the AD mentioned that psychological problems such as insomnia, despair, anxiousness, fear, and a sense of helplessness might occasionally lead to emotional breakdown.

3.3.4 Assault

In *Md. Wasim Mia and another vs. The State*⁸⁵ a minor girl dumb and deaf was found tied to a tree, stripped naked and raped by a man, The HCD upheld the man's conviction under Section 9(1) of the Nari O Shishu Nirjaton Domon Ain 2000 Act and sentenced him to a life sentence in prison and a fine of 10,000 Taka, which was to be considered compensation for the victim. In *Sohel Rana vs. The State*⁸⁶ the trial court imposed a fine of taka 50,000, and 40,000 of which was to be given as compensation to the victim by sale of property of the accused. We can see in *Al-Amin vs. State*⁸⁷ case where a girl was gang raped and photographed, Late A.K. Badrul Huq J suggest the need for compensating rape victims as Rape is a breach of the victim's fundamental right to life and violation of human dignity. The victim and her family cannot be greatly comforted by the mere punishment of those who commit sexual assault. The wrong and harm done to the victims and their families can be made right by awarding the culprits adequate monetary compensation. The amount of compensation will vary depending on the unique circumstances of each instance. No strict formula need be created, this compensation must be granted separately and without reference to the Penal Code's provision for imposing fines. compensation has to be awarded independently having no link with the provision of imposition of fine. But under 2000 Act, Tk 100,000 is treated as a ceiling rather than a baseline in practice. BLAST in there 2021 study on this matter said

⁸² 66 DLR (AD) 80

⁸³ Aanila Kishwar Tarannum, OPENING UP ABOUT SEXUAL HARASSMENT (2018) The Daily Star < <https://www.thedailystar.net/next-step/opening-about-sexual-harassment-1545403> > > accessed 18 August.

⁸⁴ Shahriar Islam Shovon, The Probability of Tort Law in Bangladesh (2022) bdreports24 < <https://bdreports24.com/the-probability-of-tort-law-in-bangladesh/> > accessed 18 August.

⁸⁵ 23 BLD (HCD) 2003 621.

⁸⁶ 57 DLR (2005) 59.

⁸⁷ (1999) 19 BLD (HCD) 307.

compensation is a matter of right and not a matter of judicial discretion⁸⁸ as only 6% of all 44 rape cases got minimum compensation under this law that year.

3.3.5 Negligence

In *Mohammad Jahirul Islam vs. Bangladesh and others*,⁸⁹ 23 people including child died and many others were injured the as safety of the victims was not ensured so for negligence under tort law writ petition was filed.

3.4 Particular situations that require the use of tort law

In Tazreen Fire Tragedy of 2012,⁹⁰ the deadliest factory fire in the nation's history took place in Ashuliya, resulted in at least 112 deaths and more than 200 injuries. The building's exits were all closed off, trapping the workers inside. Smoke and fire killed employees. For the past eight years, families of the deceased and wounded have fought for restitution. Rana Plaza Collapse of 2013, at least 1,134 people were killed and more than 2,500 were injured. five garment factories and banks were on that building one day large structural crack was discovered in the building hence the banks were closed but cracks were ignored by the owners of the clothing factory upstairs resulting that massive accident. Bangladesh was second-largest apparel exporter in the world while accounting for more than 80 percent of its export earnings in 2015 according to IFC but compensations to the victims are not even close to what it used to make.⁹¹ Furthermore, recent incidences of Hashem factory fire of 2021, Sitakunda Tragedy of 2022 and Sezan Juice factory same problems occurred but still no solution implement for the industrial accident.⁹²

3.5 Similarities in reasoning of judgments

Cases filed under tort law is very few, judges prioritize their rational thoughts in most of them as there is no designed framework though there are some similarities in all cases not solely the victims mental, physical, spiritual condition was considered along with the damages done to him and all the persons who were directly connected or depending on him. Monetary damage covered broader area, from the time of committing tort till a reasonable life time of the deceased, also for derived love, care, and nursing.

⁸⁸ Tribunal awarded compensations to rape victims in 6.8% cases: BLAST study, (2021) THE BUSSINESS STANDERD < <https://www.tbsnews.net/bangladesh/tribunal-awarded-compensations-rape-victims-68-cases-blast-study-213178> > accessed 19 August.

⁸⁹ [2017] 5508 WR (HCD)

⁹⁰ Julfikar Ali Manik and Jim Yardley, Bangladesh Finds Gross Negligence in Factory Fire (2012) The New York Times < <https://www.nytimes.com/2012/12/18/world/asia/bangladesh-factory-fire-caused-by-gross-negligence.html> > accessed 21 August.

⁹¹ Ten years of Rana Plaza: How safe is Bangladesh garment industry? (2023) ALJAZEERA < <https://www.aljazeera.com/news/2023/4/24/ten-years-of-rana-plaza-how-safe-is-bangladesh-garment-industry> > accessed 22 August.

⁹² Asif Muztaba Hassan and Yashab Osama, Narayanganj Fire: Same Problems, No Solutions to Industrial Accidents in Bangladesh (2021) THE DIPLOMAT < [Narayanganj Fire: Same Problems, No Solutions to Industrial Accidents in Bangladesh – The Diplomat](#) > accessed 22 August.

3.6 Conclusion

Despite the small number of cases, the court still rendered exquisite decisions that took into account all the relevant circumstances and victims. There might have been more compensation if the reasons were stated with greater specificity and support.

Chapter 4

Nature of Compensation Awarded by Bangladesh Courts and A Comparative Analysis with Indian and Pakistani Jurisdictions

4.1 Introduction

In all landmark tort cases we can see that while awarding the compensation the Court have considered the socio-economic position of the country and also keeping in view of the applicable laws of the country. Compensatory damages were given in most cases but in Begum Shamsun Nahar case it was aggravated damages as it was intentional.

4.2 Methods of compensation used by Bangladesh Court

In the **Multiplier Method** the court involves multiplying the anticipated annual income or dependency (referred to as the multiplicand) by a number (referred to as the multiplier), which is often less than the anticipated remaining years of the deceased. As a result, the multiplier already includes a deduction component.⁹³ It is used when the primary victim dies and the compensation is given to his family members who are directly connected and depends on him. Calculating the year's, the victim could have earned if he were alive and other amount of sum that he would have received later on, the court adds those income using this method. This method can be seen in Rowshan Akhte case,⁹⁴ Catherine Masud⁹⁵ case where deceased was family's main source of income.

The full compensation method aims to return the victim to the state he was in before to the wrongdoing. This is typically seen as the condition in which the victim experiences no harm at all.⁹⁶ In all almost cases we can see the court applying this method more specifically in Begum Shamsun Nahar⁹⁷, Bilkis Akhter⁹⁸ case, Habibullah Khan v Azaharuddin case.⁹⁹ Court did have used both methods at ones where the deceased's family were put in the previous stage before the accident as in zihad case.¹⁰⁰

⁹³ Smita Singh, Compensation in death cases under the Law of Torts in India (2022) Latest laws.com < <https://www.latestlaws.com/articles/compensation-in-death-cases-under-the-law-of-torts-in-india-186548> > accessed 20 August 2023

⁹⁴ [2010] HCD, 62 DLR (HCD)

⁹⁵ (2015) 67 DLR 527

⁹⁶ Peter Van Wijck & Jan Kees Winters, The Principle of Full Compensation in Tort Law(2021) Springer link < <https://link.springer.com/article/10.1023/A:1011260419168> > accessed 20 August 2023

⁹⁷ 66 DLR (AD) 80

⁹⁸ [1997] HCD, 2 BLC (HCD).

⁹⁹ (1983) 35 DLR 72 (AD).

¹⁰⁰ 278 5 CLR (HCD) (2017)

4.3 Tort Cases in India and Pakistan

4.3.1 Indian Tort Cases

Tort law evolves with changes in society and the demands for doing justice. The Environment Protection Act of 1986, the Consumer Protection Act of 1986, the Human Rights Protection Act of 1988, and the Motor Vehicles Act of 1988 all incorporate tort law ideas.¹⁰¹ In India, civil courts hear matters involving torts, because tort law is not codified the general public does not have much exposure to it or its application. The Hon'ble court has also noted the necessity to define tort law on numerous occasions. But India has been using tort law back to before independence. When under charter 1726 the English courts were established in three presidencies of Bombay, Calcutta and Madras which were known as 'Mayor courts', common law was made applicable considering an inseparable part of the common law but it only applied as per the conditions, customs and traditions of India.¹⁰² They could even sue the government from early nineties in case **State of Orissa v. Sreemoti Madhurilata**,¹⁰³ a government servant with his father and family were travelling by a govt. transport and servant and his father died in an accident for negligence. It was held that the govt. is liable to pay compensation. **Pushpabai Purshottam Udeshi & Ors vs Ranjit Ginning & Pressing Co**,¹⁰⁴ is a very old case for vicarious liability and negligence, Purshottam Tulsidas Udeshi who was 58 died by defendant's rash driving with negligence. 1 lac compensation was claimed, under vicarious liability Rs. 33,209 was fixed where insurance company had to pay Rs. 15,000. damage for funeral and post funeral Rs. 2000 and Rs. 31,209 for the amount the deceased would have earned working for a period of 5 years was awarded.

India has the Motor Vehicle Act, 1988, deals with motor vehicle accidents and related issues by its tribunal 'MACT' like our Vehicles Ordinance, 1963 which is not enforceable anymore. Sarla Verma & Ors vs Delhi Transport Corp. & Anr¹⁰⁵ the victims died in road accident by defendant's bus at age of 38 was working as a Scientist leaving behind his widow, three minor children, parents and grandfather, they claim for Rs.16 lakhs but later in the subsequent proceeding AD awarded Rs.8,84,870/-. In more renowned cases for road accident sued under tort, Nitin Gadkari vs Nilesh M. Ghatpande (2012) where HC awarded compensation of Rs. 3.25 crore then in Jitendra Khimchandani vs. New India Assurance (2009) case the Delhi HC awarded Rs. 7.5 crore furthermore in Rajesh Kumar vs United India Insurance (2016) the Punjab and Haryana HC awarded Rs. 8.53 crore.

In **T.O. Anthony vs. Karvarnan & Ors**,¹⁰⁶ the appellant, a Kerala State Road Transport Corporation driver, was involved in a head-on collision with a private bus near Kannanoor,

¹⁰¹ Srishty Bansal, Practice of Law of Tort in India (2022) Indian Law Watch < <https://indianlawwatch.com/practice/practice-of-law-of-tort-in-india/> > accessed 19 August

¹⁰² Development of Law of Torts (2021) legal Paathshala < <https://legalpaathshala.com/development-of-law-of-torts/> > accessed 20 August 2023

¹⁰³ 1952 AIR 12, 1952 SCR 28

¹⁰⁴ 1977 AIR 1735, 1977 SCR (3) 372

¹⁰⁵ (2009) 6 SCC 121

¹⁰⁶ (2008) 3 SCC 748

resulting in injuries including a right femur fracture, and filed a petition for compensation. It was driven by the first respondent (belonging to second respondent, and insured with third respondent). HC awarded each defendant Rs.1,58,300, for special damages- medical expenses, attendant's expenses, loss of earnings, towards transportation, towards nourishing food, damaged cloths and the rest for general damages. In **Pawan Kumar & Anr. v. Harkishan Dass Mohan Lal & Ors**,¹⁰⁷ The HC held term "composite negligence" when two or more wrongdoers act negligently and cause an injury to a person. Each perpetrator is jointly or severally liable to the wounded for the payment of the full damages in such a scenario, and the victim has the option of bringing legal action against all of them or just one. Contrarily if any harm done where his own negligence is present then it is contributory negligence. The Corpus Juris Secundum¹⁰⁸ has defined the Contributory negligence, it is another form of negligence done by the plaintiff's actions that violate the legal duty to take reasonable precautions against harm and which concurring with actionable negligence on the part of the defendant contributes to the legal injury.

Assault

Vishaka and Others Vs State of Rajasthan¹⁰⁹ case is a landmark in India for the brutal gang rape of a social worker Bhanwari Devi in Rajasthan because she tried to stop a child marriage, after this case the tort of sexual harassment at work place emerged. Now India has come out with a lot of laws protecting woman after signing the CEDAW. In **Kerans v. Porter Paint Company**¹¹⁰ The court ruled that even sexual harassment injuries can be addressed by paying compensation, even though this may not be enough to fully address these injuries in cases when the employers knew the sexual harassment of their employees and do nothing, they will become vicariously accountable. In *Nammi bano v Public information officer, national Commission for Women, V.V.B Raju* with the full support of chairman stated harassing Nammi Bano to repeatedly visit his office room with files in order to restrain her in his room and when she did not accept his offer her salary was deducted to Rs.1000 to Rs. 8000. In this case the commission awarded Rs.50,000 as compensation, also in case *Sumitraben Mangaldas Mehta vs Manager Lyka Labs ltd.*¹¹¹ Most cases did not exceed Rs.50,000 while awarding the compensation.

Corporate Negligence

Rana Plaza Collapse of 2013, Sitakunda Tragedy of 2022, Hashem factory fire of 2021 were not filed under tort where Indian case of 1984 **Union Carbide Corporation v. Union of India** also known as Bhopal Gas Tragedy¹¹² 45 tons of the dangerous gas methyl isocyanate escaped from an insecticide plant causing death 15,000 people, a million survivors suffered with- respiratory

¹⁰⁷ 2014 (3) SCC 590

¹⁰⁸ Donald J. Kiser, LL. D, Corpus Juris Secundum, A Complete Restatement of the entire American Law (Vol.XXXIV, The American Law Book Co,1942) 250

¹⁰⁹ AIR 1997 SC 3011

¹¹⁰ 61, Ohio St. 3d 486,575- 1991

¹¹¹ S.C.A. No. 5128/2005.

¹¹² AIR 1988 SC 1531

problems, eye irritation or blindness, and other maladies. Union Carbide Corporation agreed to pay \$470 million as compensation to the victims and their family.

4.3.2 Pakistan Tort Cases

Pawan Kumar & Anr. v. Harkishan Dass Mohan Lal & Ors,¹¹³ Deceased Yogesh (12 years) and Parshotam D. Gupta and injured Salochna were travelling in Jeep. Parshotam D. Gupta (owner) and Yogesh (driving) died on the spot whereas Salochna received serious injuries by an accident with a truck coming from the opposite direction. The HC concluded that the accident was caused by both the truck and the jeep that the deceased and injured were riding in. liability was divided into 70% for the driver/owner of the truck and 30% for the driver/owner of the jeep. Rs.2,00,000/- was awarded respect of the death of Yogesh where 30% was payable by driver/owner/insurer of the jeep and for deceased Parshotam Rs.5,76,000/-, accordingly made the respondent Nos.1, 2 and 3 (insurer) liable.

In **Irfan Khan v Islamic Republic of Pakistan**,¹¹⁴ it was held Each tortfeasor is jointly and severally liable to compensate the people who have lost a loved one or experienced harm to their person or property in cases of composite negligence involving two or more parties, as in Catherine Masud case. In Islamic Republic of Pakistan through Secretary, Ministry of Railways, etc. v. Abdul Wahid,¹¹⁵ it was held by the SC that public authority cannot seek for 'contributory negligence', in this case three person died on railway track by collusion with railway engine and the Court awarded against the railway authorities as it was due to the failure of the Railways to safeguard against the hazard. The burden could not shift until and unless through positive and cogent evidence establishes by the Railway authority that all the safety measures were fully secured and intact, but it is the victim who being aware of the peril breached those measures, such as having opened the closed gate or by scaling over or breaking through the fence he has met the accident, same we can see in Zihad's case¹¹⁶both authority could not curtail their breach of duty.

In **National logistic cell vs Irfan Khan & others**¹¹⁷ deceased with 3 other people were killed in a road accident in a rash and negligence driving of the defendant, who was driving a trailer owned by a government organization that time. Same time repairing work on the road was being held in one side by the City District Government authority hence was closed for traffic. Only one side was available for vehicles thus it was being used from both ways. The legal heirs filed a suit under compensation under Fatal Accidents Act,1855, against the City District Government authority, the government organization and driver. HC gave judgment in favour of the plaintiff for 'Composite Negligence' and awarded Rs. 27,097,43.63 against the defendants jointly and severally with Rs. 300,000 for each of the minor child of the deceased along with profit 15% per

¹¹³ 2014 (3) SCC 590.

¹¹⁴ 2005 MLD 1409

¹¹⁵ 2011 SCMR 1836

¹¹⁶ 278 5 CLR (HCD) (2017),

¹¹⁷ 2015 SCMR 1406

annum from the date of judgment till the date of recovery of it. AD later in this case deducted the amount to Rs.100,000.

4.4 The Concept of Vicarious Liability of the State (India and Pakistan)

In a case involving Indian law, the Indian Supreme Court provided adequate compensation to the sufferer, whose young son 9 years old had died as a result of the torturous actions beating and assault of police officers. The Supreme Court of India decided, among other things, that the State govt. should be held to the same standards of liability as any other employer for any tort committed by a servant while acting in the course of his official duties. for the violation of art.32 of the Constitution of India, the SC awarded Rs.75,000 as compensation in case Saheli, a womans's resources centre, Nalini bhanot vs. Commissioner of police, Delhi police head-quarters and ors.¹¹⁸ Furthermore the Government of Sindh in its case¹¹⁹ was ordered to pay damages to the legal heirs of people who died as a result of a Sindh Police employee's negligence while performing their official duties. The driver of the Police Mobile had slammed into a motorcyclist in a careless and reckless manner, ultimately killing the motorcyclist, and as a result, the driver and employer was held vicariously liable. This was a landmark judgment that was reported by the Sindh High Court and upheld by the Supreme Court but in Bangladesh there are no similar action taken against the State under tort.

4.5 Conclusion

When judges make decisions in tort law cases, they consider a variety of factors and legal principles to arrive at a fair and just judgment- Judges evaluate whether the defendant owed a duty of care to the plaintiff that he breached. We have seen 'Contributory Negligence' being considered along with Damages as economic damages (such as medical expenses and lost wages) and non-economic damages (such as pain and suffering). The nature of tort judgments in Bangladesh is similar to judgments in other common law jurisdictions, but it is shaped by the specific laws, legal principles, and judicial practices of Bangladesh and Judges often look to legal precedent and previous judgment, Public Policy if it relates. Indian and Pakistani tort cases are larger in number than Bangladesh but all tort cases of this land was given same vitality as them. tort law was applied in a variety of situations in both India and Pakistan and it is still evolving nonetheless it is not same for Bangladesh yet. There is no assault case like Batb case in other countries.

¹¹⁸ AIR 1990 SC 513

¹¹⁹ 2014 MLD 1651

Chapter 5

Recommendations and Conclusion

5.1 Findings

1. There is no statutory Tort law in Bangladesh.
2. No statutory provision specifically defines Tort or its kinds, elements and sectors that it covers.
3. Lack of judicial Activism and there are no specific Damages Assessment guidelines.
4. Bangladesh's tort law primarily relies on fault-based liability (negligence) rather than strict liability.
5. Who will pay the compensation not mentioned anywhere thus it is an unclear fact that in case of compensation where there are public bodies or the individuals.
6. There are not a lot of cases under Tort as many people in this country are not aware of this law and advocate does not suggest it to them.
7. The victims of torts in Bangladesh currently have a few limited remedies. Under the existing system, the decision to award compensation and the amount of compensation remain at the discretion of the court, and the remedy of compensation results in an ex-gratia obligation on the part of the State to compensate rather than a statutory obligation.
8. All cases tried under tort are significantly different in terms of substantial and procedural law hence it will help set forth a positive trend in the development of tort law in Bangladesh.
9. It appears that the HCD is the only body that has decided compensation in some circumstances. The lower courts do not adjudicate the torts claim in our jurisprudence.

subordinate courts are not involved in adjudication of torts as courts do not feel empowered to determine a tortious claim.

10. Bangladesh's tort law does not have a well-developed understanding of punitive damages, which are meant to punish the wrongdoer rather than merely recompense the victim. Punitive damages' accessibility and guiding principles might have to be expanded.
11. The compensation granted may not adequately reflect the entire nature of the injury suffered by the plaintiff in many tort cases, particularly those involving non-economic damages like pain and suffering.
12. Courts did consider physical, mental and spiritual harm caused to the victim and he's family or persons who are directly connected and depends on him in all cases. Grounds that were remote to the tort was declined and Courts in own motion increased amount of compensation in case that had more monetary value while calculating it.
13. Court considered the socio-economical condition along with financial condition of the employer and employee where they awarded against both for vicarious liability and negligence.
14. India and Pakistan had cases where they even put in stand the administrative organ but in Bangladesh, most cases are criminal in nature. Their pleaders showed more specific grounds for compensation than Bangladesh's advocates.

5.2 Recommendations

1. This paper first recommendation is to make the legislation of claiming compensation under Tort law.
2. The state needs to pass legislation right away in the essence of tort that includes a provision compensating those who harmed by Public Authority.

3. There should be clear and complete statutory provision which specifically defines all Torts.
4. The non-governmental groups and the civil society must take the initiative to support those who have been wronged in their efforts to contact the proper courts and establish their legal rights.
5. In assault cases compensation should be a matter of right and not a matter of judicial discretion.
6. A new system to calculate possession of money should be introduced specially for tort. Compensation could be collected from the monthly income of tortfeasor who does not have property of own as most people in this country do not have insurances.
7. Many cases pending in the Court could had been filed under Tort for compensation as Tazreen Fire Tragedy, Rana Plaza Collapse and cases of recent years identical to Indian and Pakistani Cases.

5.3 Conclusion

From the above discussion, we can see there are new form of remedy given by the court in particular cases thus the judiciary is its good intention trying to establish the constitutional/public and private tort in our legislation. The truth is that morality is the foundation and organization of the entire tort law in our country and there is extreme need of codified law. Due to the fact that we fall behind of other nations in terms of handling tort claims, we require a codified rule that not only includes victims in the access to justice process but also inspires confidence in the administration of justice. In all judgments the Court tried to fulfill all the victim's reconciliation within their rationality and morality connecting with similar mostly Indian cases. A significant answer to the problems the doctrine currently faces

will emerge if more tort cases are brought before the court where the tortfeasor does not have any property. People should be made aware of how to apply this law properly and right now is the time to take the required steps to establish a thorough tort system in Bangladesh.

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