



**FACULTY OF JURIDICAL SCIENCES**

**COURSE: LL.B. I st Semester**

**SUBJECT: LAW OF TORTS**

**SUBJECT CODE: LLB102**

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## LECTURE 11

### TOPIC: DEATH IN RELATION TO TORTS

There are two ways in which death affects liability in tort:

- the survival of causes of action under the Law Reform (Miscellaneous Provisions) Act 1934; and
- the creation of liability under the Fatal Accidents Act 1976 for the benefit of dependents of deceased persons.

#### **Law Reform (Miscellaneous Provisions) Act 1934**

This Act comes into play if either the claimant or the defendant dies before the commencement of proceedings. The Act enables the personal representatives of the deceased victim to recover such damages as he might have received had he lived, subject to certain exceptions.

On the death of the defendant or claimant, all causes of action shall survive against, or for the benefit of, his estate (s1(1)). The exceptions are as follows:

Section 1(1) does not apply to cases of defamation (s1(1)).

The right of a person to claim for bereavement, under s1A of the Fatal Accidents Act 1976, below, shall not survive for the benefit of his estate on his death (s1(1A), as inserted by the Administration of Justice Act 1982, s4).

Where a cause of action survives under s1(1), the damages recoverable shall not include (i) exemplary damages; or (ii) damages for loss of income in respect of any period after the deceased's death (s1(2)(a)).

Damages shall be calculated without reference to any loss or gain to the deceased's estate, except that funeral expenses may be included (s1(2)(c)). Thus, for example, the loss of an annuity ceasing on death or the gain arising from a life insurance policy payable upon death are disregarded. Funeral expenses, as stated, may be recovered.

Where damage has been suffered in respect of which a cause of action would have subsisted against the tortfeasor if the tortfeasor had not died before or at the same time as the damage was suffered, a cause of action shall be deemed to have been subsisting against him as would have subsisted if he had died after the damage was suffered (s1(4)).

The rights conferred by this Act are in addition to the rights conferred on the dependants of deceased persons by the Fatal Accidents Acts (s1(5)). Surviving dependants have their own cause of action for economic loss which they have suffered as a result of the death of the breadwinner.

**Exercise:**

1. A master is liable for the wrong of his servant if the servant
  - a) Has acted outside the scope of his duty in violation of express orders
  - b) Is temporarily lent to another
  - c) Is drunk while on duty
  - d) Has acted in self-defence against the criminal conduct of the person who sues the master.
2. Which article of the constitution of India lays down that the Union of India and the States can sue and be sued:
  - a) Article 301
  - b) Article 300
  - c) Article 304
  - d) Article 365

3. To succeed in an action for the tort of negligence, what is required to be proved is
- Damages sustained.
  - Duty situation arises.
  - Breach of duty owed to someone.
  - Breach of duty owed to the plaintiff.
4. P brought a bottle of soft drink and poured one half of contents in a glass and drank it. When she poured one half of contents in a glass and drank it. When she poured the remaining contents, a decomposed body of snail floated above. P became sick and claimed damages against the manufacturing company.
- The company owed no to P
  - The company owed a duty to the general public including P.
  - The company was not liable, but the retailer would be liable.
  - The company could not foresee that P would buy the bottle.
5. 'A' was carelessly driving his car at 50km/hr. at a busy street in the city and hit 'B' injuring his leg. On these facts the Supreme Court of India held that 'A' is liable to pay compensation to 'B'. It means that the injured party is entitled for compensation in all cases of
- Car accidents at a busy place, if the driver was negligent.
  - Causing injury in accidents by negligent driving of any vehicle.
  - Inflicting physical injury by negligent.
  - Negligent causing of damage to another.