



Negligence factor in road accidents

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Abstract

Accident is sudden event occurring without intend or violation whether through negligence, carelessness, unawareness, ignorance or a combination of causes and producing an unfortunate result, an unexpected happening causing loss or injury which is not due to fault of the person anything that happens. The data published by national crime bureau report 2015 clearly indicate that the traffic accidents were increasing by 3.1% in respect of 2014. A total accidental death in the year of 2014 was 4, 81, 805 and in the year of 2015 4, 96, 762, road accidental death during 2015 was 1, 48, 707. The studies apparently clear that one vital factor is responsible for the accident which is human error mostly accident took place due to rash and negligence manner of the driver. My study is based on law of Torts, it is ever expending law, it measures the awareness and consequences of right of the citizen and their zealous protection. Thus, to prevent the accident on road it is needed to restrict the risky driving behavior of the driver and necessary to follow road traffic rules to control over the accident.

Keywords: negligence, carelessness, unawareness, ignorance, road accidents

Introduction

It may said that the Driver of vehicle is require to keep a proper lookout on the road for other users of the road, it is also the duties of driver of Motor vehicle to exercise due care and caution in driving the vehicle and to control it when situation demands so. Most safety studies come to of Motor Accident to exercise due care and caution in driving the vehicle and to control it when situation demands so. Most Safety studies come to the conclusion that human error is vital elements of Motor Accident and negligently in part of drivers is important causes of Motor Accident.

Analysis Negligence factor

Negligence words 'neglect' and negligence have the same origin. They origin from the latin word 'neo' means – not and 'lego' meaning together, that is the falling to take such care, show some attention, pay such courtesy etc, as may be rightfully demand.

The expression 'Negligence' literally means infliction of an injury or damage as a result of failure to take care – for example, when a person drivers a Motor vehicle, he has a duty to take necessary care. If he does not do so and commits an accident. He is liable for negligence.

Negligence is a term of art but has distinct meaning in different Jurisdiction – In Torts, damage is an essential ingredient, but that element is not necessary in the law of master and servant. In crimes, there is a series of offence, based on negligence, in which I injury is not material. It is enough like to injury or endanger life.

Tortuous negligence known to law at that point of time was in the form of liability of those person in society who professed to be competent and skilled in certain public calling. There person were required to give proper service if they were

supposed to breach their duty, the negligent factor will conduct and they made liable for breach of duty thus, negligence is omission of duty caused either by an omission do same thing which a reasonable man would not do. Negligence is not an absolute term, but it is relative one is a rather comparative term. Negligence is the breach of duty and the duty to take care as to not to do harm to others – for examples:-

Which he drives the omnibus. The mere fact of an omnibus driver trying to overtake a term car does not itself can note either negligence or rashness. Negligence is only one of the species of causes of accident. Victim may claim for compensation in respect of accident arising out of use of Motor vehicle due rash and negligence. Negligence means breach of duty caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing. Something which is a prudent and reasonable man would not do. Since no absolute rule can be laid down by which negligence or its absence can be judged in a given case; negligence would be necessarily vary in, different cases and for judging the same all the attending circumstances of a particular case have to be taken into account.

Essential Ingredients of Negligence

The plaintiff to be successful in an action for 'negligence'; has to satisfy the following conditions or essential elements:

1. That the defendant owed a duty of care towards the plaintiff,
2. That the defendant committed a breach of such duty, and
3. That the plaintiff suffered damage as a consequence thereof. (PohKim Nagoh v. Yop Chwee Hoi) ^[1].

¹ 1971 ACJ 389 9Singapore, D' Cotta, J.

Defendant's duty of care towards the plaintiff

The plaintiff has to prove that the defendant had a duty of care towards him or her. Every person while doing an act, owes a duty of care so that another person is not adversely affected as a consequence of such act.

Scope of the duty

Whether the defendant owed a duty of care towards the plaintiff or not, is determined by applying the test of reasonable foreseeability. If the injury is foreseeable, the defendant owes duty of care towards the plaintiff.

Breach of duty to take care by the defendant

The plaintiff has to prove that the defendant committed a breach of duty to take care. Breach of duty means non-observance of a duty i.e. the defendant had failed to take care. To decide the question, whether there has been a breach of duty, it is necessary to keep in mind, the 'Standard of Care'. The standard of care which law requires is that of a reasonable and prudent man.

Standard of care

To determine the standard of care the following points may be taken into consideration:

1. Importance or utility of the act.
2. Gravity of the risk.
3. Cases of emergency and other relevant factors as to the nature of the case

Importance or utility of the act

The degree of care to be taken by the defendant depends upon the importance and utility of the act performed by the defendant.

Gravity of risk.

The degree of care to be taken by the defendant depends upon the nature of the act. A person performing a work with some explosives or dangerous substance has to take greater care, when compared to perform the work with non-dangerous substance. The degree of risk involved is not the same in all occasions.

Cases of emergency

To observe standard of care, certain speed limits are prescribed for motor vehicles within the town limits. This restriction is liberalized in respect of emergency cases. For instance, excessive speed by Fire Engineer to save the life and property as a consequence of fire accident.

Damage as a consequence of breach of duty by the defendant

The tort of negligence is not actionable *per se*. The plaintiff has to prove that he had suffered substantial damage as a consequence of defendant's act. The act of defendant causing damage to plaintiff must be a proximate cause. The damage suffered by the plaintiff must be proximate but not too remote. The amount of damages depends upon the character of the negligence.

Triple concept of negligence

The only ingredients necessary for the tort of negligence are the triple concept, duty, breach and damages. It's only when the three ingredients co-exist that a suit for negligence can lie. Negligence is simple neglect of some care which we are bound towards somebody.

Sole negligence

Accident took place between a cyclist and bus at a busy area, where bus driver was expected to slow down the bus, but he failed to do so, hence, bus driver was solely responsible for causing accident. *Mrs. Shakuntala Delli v. State of Haryana* [2].

Where jeep was driven at a high speed in a zig-zag manner and driver of the jeep was not produced, it was held that jeep driver was rash and negligent and solely responsible for the accident. *4 Daryczobai v. M.P. State Road Trans. Corpn* [3].

When the truck dashed against a car coming from opposite direction, truck was on the wrong side of the road and had been driven at an excessive speed, therefore, truck driver was solely negligent in causing the accident. *Shakuntala R. Sant v. Rajendra D. Thakkar* [4].

When the conductor and driver allowed passengers to travel on the roof top. The driver was solely negligent in causing the accident. *Inja Venkatrao v. Sundara Barik* [5].

Where eye-witness deposed that car was being driven at a high speed and the motor cycle was not at high speed and the car collided with the motor cycle; and eye-witness's version was not challenged, it was held that car driver was solely responsible for causing accident. *Gita Joshi v. Gurupada Nanda* [6].

Gross negligence

Gross Negligence imports a high degree of careless conduct. Gross negligence merely denotes a high degree of carelessness which has to be determined from the circumstances of the particular case. *Beni Madhva v. Commissioner, Jubbulpore*, ILR 1945 Nag 228.

Criminal Negligence

Criminal negligence means failure to exercise reasonable and proper care and precaution to guard against injury either to the public or to an individual. *State of Gujarat v. Dr. Maltiben Valgibhai Shah* [7].

Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury, but without intention to cause injury.

Res ipsa loquitur

The maxim res ipsa loquitur applies notwithstanding a defendant is entitled to succeed, even though he cannot explain exactly as to how the accident happened, if he establishes that there was no lack of reasonable care on his part. The rule of *res ipsa loquitur*, that is "the thing speaks for

² 2000(1) TAC 133 (P&H).

³ 1996(1) TAC 600: 1996 ACJ 1233.

⁴ 1994 ACJ 1147 (Born).

⁵ 1991 (1) TAC 637: 1991 ACJ 581 (On).

⁶ 1992 (2) TAC 22: 1992 ACJ 941 (Ori).

⁷ 1994 ACJ 3759Guj.

itself is an exception to the general rule, that it is for the plaintiff to prove negligence and not for the defendant to disprove it. The doctrine only means that an accident by its nature be more consistent with its being caused by negligence for which the defendant is responsible than by other causes, and in such a case the mere fact of the accident would be *prima facie* evidence of such negligence. The burden of proof will be on the defendant to explain and to show that the accident occurred without any fault on his part. Thus the applicability of the doctrine to such case is merely a rule of evidence relating to burden of proof and nothing more. In the absence of any explanation on the part of the defendant, the Court can infer negligence on his part. *Cole v. De Trafford*, (1918) 2 KB 523 followed in *MP Road Trans. Corpn. v. Sudhakar*^[8],

Duty of drivers of vehicles

It is a firmly established rule that a person driving a motor vehicle on a highway must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the roads, cyclists or others who have a similar right to use the highway on which he drives it. Therefore, to prove negligence, what is to be established is that the driver drove his vehicle without exercising that reasonable care which was expected of him, if he drove his motor vehicle on the correct side of the road, it would be easy to infer that the collision was on that stretch of the road and that there was no negligence, but if, on the contrary, the evidence establishes that the collision was on the offside of the road from the direction in which the driver was proceeding, the fact that he did so is *prima facie* evidence of negligence unless it is established that in the circumstances it was reasonable on the part of the driver to depart from the correct side of the road and stay into the offside. It is incontrovertible that a person driving a motor vehicle must keep a good lookout in all directions of the road on the sides and on the stretch of the road in front of him. *Seethamma v. Benedict D's A.*^[9],

Duty of driver of motor vehicle towards children and disabled persons

Care must be taken especially in case of child. A girl aged 7 years while crossing the road run over by the truck and died on the spot. Tribunal held that the girl was negligent for her death and not the driver and application rejected. *Held*, when a child is involved in accident, it is no answer to say that the child was negligent. Therefore, death caused by the negligence of the driver of the truck. *Ram Kumari Shanna v. Ram Kishan*^[10], A duty is cast upon a driver of the vehicle to be cautious while driving a vehicle particularly when school children are crossing the road. The involvement of the offending vehicle stands proved. *Arti v. Pritam Singh*^[11],

It is settled rule of evidence in case of accident that no negligence can be attributed on the part of infants or a child like the present one. A driver of the motor vehicle should have proper look and should take care to avert such accidents. *Deu*

Chand v. Babulal Faujdar Bus Service^[12],

Conductor and driver of public vehicles-Duty and liability

The safety of the public who travel by public conveyance like a bus is the primary concern of the conductor and the driver who are in charge of and in control of public conveyance. For instance, where the conductor sees that a passenger was boarding the bus and is yet on the footboard, he should not give the bell for the starting of the bus, but should wait till the passenger gets inside the bus. To give the bell and thus signal the driver to start the bus in the situation is nothing but rashness and negligence on the part of conductor. The conduct of the driver will also be rash and negligent in that he drove the offending bus so closely near the stationary bus that there was no sufficient clearance between the two buses and the deceased got squeezed or sandwiched between the two buses. *Smt. Ishwar Devi Malik v. Union of India*^[13],

The driver and conductor of the bus both were negligent in allowing a passenger to load heavy iron goods on the top of the bus without taking proper precautions to avoid their falling off, therefore, the Corporation was held liable. *M. Jajamma v. General Manager, Andhra Pradesh State Road Transport Corpn*^[14].

Under Section 45(1) of the Road Traffic Act, 1930 the Minister of Transport has prepared a Highway Code for the guidance of all persons using highways a failure on the part of any person to observe any provision contained therein may be relied upon by a party to proceedings as tending to establish or to negate any liability in question. The defences of contributory negligence or inevitable accident would still be open to the defendant, but once it proved that he has broken one of the normal rules of the road and this may have been the cause of the accident, then the burden of proof would have been discharged by the plaintiff. *K. Gopala Krishnan v. Sankara Narayanan*^[15], In general the rule holds, though there is one case not unambiguously reported which seems to bear another construction, it is clear that the fact that a person driving on the wrong side of the road indicates carelessness, and hence *prima facie*, points to negligence.

Cross-roads-Rule of driving

It is fundamental rule of good driving that whenever approaching a crossing, the driver must stop to see what is the state of affairs on the cross-roads. *Fazilka Dabwati Transport Co. (Pvt.) Ltd. v. Mohan Lal*^[16].

The accident had taken place at the crossing and truck driver was driving the truck at a high speed while approaching the said crossing. The truck driver was negligent as he did not care for the vehicles which were going on the main road through the said crossing. According to the Traffic Rules, the vehicle coming from the main road, had a prior right of crossing and the vehicle which was to come from the side roads had to give way to the vehicles going on the main road. The scooter driver who was going on the main road had not in

⁸ AIR 1968 MP 47.

⁹ AIR 1967 Mys 11.

¹⁰ 1985 (2) TAC 378: 1985 ACJ 493 (Raj)

¹¹ 1994 (1) TAC 30: 1994 ACJ 186 (P&H).

¹² 1997 (2) TAC 587: 1997 ACJ 392 (MP).

¹³ AIR 1969 Del 183.

¹⁴ 2000 (3) TAC 152: 2001 ACJ 1040 (AP).

¹⁵ AIR 1968 Mad 436

¹⁶ (1967) 69 Punjab L.R. 776.

any manner contributed to the accident as he could not have realized in normal circumstances that any vehicle would come at fast speed from the side road and cause the accident. The Tribunal was right in coming to the conclusion that the accident occurred as a result of rash and negligent driving by the driver of the truck. *Sudha Nangia, Dr. (Mrs.) v. Ihjnbrahim* ^[17].

Invitation to passengers to travel on the roof of vehicle- Whether amounts to negligence

It was held that inviting passengers to travel precariously on the top of an overcrowded bus was itself a rash and negligent act and that apart when passengers were being made to travel on the roof a greater amount of care and caution on the part of the driver was called for so that his leaving the metallic track by swerving on the right so close to a tree with overhanging branch for overtaking a cart while in the speed was also a rash and negligent act. *Rural Transport Service v. Bezlum Bibi* ^[18],

Non-blowing of horn-If negligence

Van driver without blowing any horn crashed on the scooterist resulting in his death. Evidence that he was in high speed. *Held*, deceased died as a result of the accident caused by rash and negligent driving of the prison van. *State of W.B. v Satish Sharma* ^[19],

Excessive speed of vehicles-If negligence

Speed of a vehicle by itself would not lead to conclusion of negligence in driving. It would depend upon the place and circumstances where and under which the vehicle was moving. Similarly, it is not always true that a vehicle which is moving in its left cannot be said to be negligently driven. Nature of the vehicle, space available to negotiate and normal behaviour of the traffic are some of important circumstances to be taken note of. *Ansara Begum v. Aqeela Khatoon* ^[20].

Ordinarily, a person who drives a vehicle on a highway has a duty to take a reasonable and proper precaution in the use of the vehicle, and a failure to observe such precaution will give a cause of action to any person who suffers damages. The driver must exercise not only care but also skill. He must observe the ordinary rules of the road. He should not drive at an excessive speed. What is an excessive speed will depend upon all the surrounding circumstances of the case. The driver must keep a proper lookout for pedestrians or other users of the roads. He must, whenever expedient, give warning of his approach as at cross-roads. Even, if another user of the road is negligent, he must exercise due skill in trying to avoid the consequences of that negligence. Failure on the part of the driver in any such matter would be a breach of duty on his part, and he would be liable for the damages caused by the negligence.

Non switching of head light in darkness

Where alone eye-witness specifically mentioned the name and

number of the bus and states that it was coming at fast speed without switching on headlights when darkness was setting in the evening and without blowing horn; and investigating officer suspected the involvement of the bus from the glass pieces seized from the spot and verifying buses on the route, it was held that accident occurred due to rash and negligent driving of the bus. *New India Assurance Co. Ud. v. Mahadei Behera* ^[21].

Where offending vehicle was driven in night without light and driver of the vehicle did not enter the witness box and did not controvert the evidence of claimants, it was held that accident occurred on account of negligence of the offending vehicle. *M.P. S. R. T.C. v. Rajni Kant* ^[22],

Poor maintenance of vehicle

Where accident took place due to poor maintenance of the vehicle by its driver or owner, the owner and driver of the vehicle are held negligent. *Gurbaksh Rai v. Chandgi Ram* ^[23],

Boarding in vehicle

Where, when the deceased was boarding a bus and was still on the footboard, the bus conductor rang the bell for starting bus, he was held to have acted in a rash and negligent manner; and when the driver drove the bus so closely near to another stationary bus that there was no sufficient clearance between the two buses, in consequence of which the deceased got squeezed and sandwiched between the two buses, the bus driver was also held to have acted in a rash and negligent manner. *Ishwar Deui Malik v. Union of India*, AIR 1969 Del. 183.

Alighting from vehicle

When passenger was alighting from a bus, the driver started the bus and the passenger fell down and was run over and injured. Since, it was duty of the driver to ensure that last passenger had got down before he started the bus. therefore. driver was' held rash and negligent. *Delhi Transport Corporation v. Ram Kumar* ^[24],

Opening of door of vehicle and striking a pedestrian

Opening of the door of a vehicle and striking a pedestrian is to be itself a negligent act. *Kumudini Das v. Rajat Kumar Baliar Singh* ^[25],

It was prime duty of the driver and conductor to lock the exit gate either before giving whistle to move or during operation/driving of the vehicle and having failed to do so, the bus owner and the servants employed to operate it, are certainly liable for the accident having taken place as a result of the defect in the bus body or its gate or gate lock. *Rajasthan State Road Trans. Corpn. v. Ram Niwas* ^[26].

Running over pedestrian

Bus came on its side, dashed against the girl, ran over her head, that was *res ipsa loquitur* the thing speaks for itself.

¹⁷ 1994 (1) TAC 89: AIR 1993 Del 361: 1994 (1) TAC 89: 1993 ACJ 1290 (Del. HC).

¹⁸ 1980 TAC 236 (Call: AIR 1980 Cal 165: 19r ACJ 327.

¹⁹ 1985 (1) TAC 413: 1985 ACJ 271 (Cal).

²⁰ 1995 (1) TAC 57 (All).

²¹ 1994(2) TAC 148. 1994 ACJ 1096 (On).

²² 2000 (3) TAC 332 (MP).

²³ 1996 (1) TAC 166: 1996 ACJ 1276 (Del).

²⁴ 1991 (1) TAC 399: 1991 ACJ 872 (Del).

²⁵ 1996 ACJ 1182 (Ori).

²⁶ 2002 ACJ 475 (Raj).

Held, bus driver rash and negligent. *A.S. Manjunathaiah v. M. V, Manjundiah* ^[27].

Run over the sleeping person

In the instant case, truck was parked with its engine running. It moved at its own accord and a person sleeping under a tree was run over and killed. Effective obstacle under wheels of truck was not placed. Truck was loaded and was not parked with hand brake and in gear. Driver of truck was rightly found careless and negligent and finding of Tribunal was upheld. *Nagarathinam v. Murugesan* ^[28],

No proper parking

Where bus driver had parked the bus on one side of the road without its parking lights on or any other indication to warn the other road users, it was held that bus driver was negligent in causing the accident. *New India Assurance Co. Ltd. v. Maya Wati* ^[29],

Leaving vehicles in dangerous position is negligence. *Bhutani v. Haryana State* ^[30].

Sudden start of vehicle by driver

If a person suddenly crosses the road, a driver of a vehicle, however slowly driving, may not be in position to check the vehicle and therefore. It will not be possible to hold that the driver was negligent. *Ravi Nair v. State* ^[31],

Head-on-collision

Where from evidence of claimant it was established that there was head-on-collision between bus and mini truck; suggestion that mini truck was stationary was stoutly denied; and no attempt was made to adduce evidence in rebuttal, it was held that accident was by rash and negligent driving of both vehicles and such finding of Tribunal cannot be interfered with. *New India Assurance Co. Ltd. v Shambhunath Gupta* ^[32].

Vehicle dashed against tree

The driver of the bus himself has admitted that the bus has dashed against the tree standing by the side of the road. The very fact that the motor bus dashed against the tree standing by the side of the road goes to show that the vehicle was on a high speed and since it could not be stopped immediately in front of the buffaloes it had to be taken towards the side and it dashed against the tree thereafter. It can very well be assumed that the buffaloes were quite good in number and if they have covered the whole road they must have been visible from a distance in the light of the vehicle. Had the vehicle been on a moderate speed it could be stopped earlier and was not required to be taken towards the left side and out of the road. Since the accident happened by the side and out of the road and Kamal Singh sustained injuries because of the vehicle going out of the road it shall be inferred that the driver was negligent in driving and it has rightly been held so. *Sitabai v*

²⁷ (1985) 2 TAC 8 (Kant).

²⁸ 1991 (21 TAC 600: }991 ACJ 673 (Mad).

²⁹ 1992 (1) TAC 6: 1992 ACJ 620 (Del).

³⁰ (1984) 1 TAC 72: 1983 ACJ 640 (Punj).

³¹ 1995 (2) TAC 132 (MP).

³² 2000(1) TAC 756 (MP).

M.P. Rajya Pariwahan Nigam ^[33],

Collision of vehicle on cross road – Factors to determine negligence

In a case it was found on evidence that neither the driver of the bus, nor the driver of the car were sure as to the speed of one another which they miscalculated therefore it was held that in that respect both were equally negligence.

Two-wheelers involved in accident

Accident by the bus hitting motor cycle, took place on the left *kuchha* portion of the road. Metalled portion of the road was very wide. No other traffic on the road. Position of the motor cycle and bus showed that the bus was being driven at a fast speed. Motor cycle lying on the left side of the road. Tribunal held that the bus driver was rash and negligent. Finding on negligence upheld in appeal. *G.M. Rc.jasthan State Road Transport Corporation, Jaipur v. Kanti Delli Singh* ^[34],
 Accident between motor cycle and lorry. Death of motor cyclist who was aged 24 years. Accident took place not solely due to rash and negligent driving of the motor cyclist. Driver failed to take precautions. *Held*, that the accident was due to his rash and negligent act.

The Drivers and Riders of Motor Vehicles require an adjustment in the permitted behaviour as followers

1. Motor drivers prohibited from overtaking another vehicle, either moving or stationary in the same lane;
2. Precaution should be taken at T – intersections;
3. Driver obligations giving way when turning at an intersection with traffic lights;
4. Requirements for stopping and giving way at a sign;
5. Requirements for parking vehicle in same direction as the traffic flow;
6. Motor bikes permitted to ride in both directions on footpaths on a one way street;
7. Prevention of passengers travelling in the vehicle or trailer being towed by the vehicle, from using radar detectors and similar devices;
8. Prohibited to driving the vehicle in influence of liquor;
9. Prohibited from driving in high speed; and
10. Strictly follow the traffic rules.

The Data of death of persons due to Road Accident in the country have increased by 3.1% during 2015(148,707) over 2014(1,41,525).That the number of Road Accident during 2011-15 clearly shows that it is alarming position ^[35].

Table 1: Number of Road Accidents during 2011-15.

S. No.	Year	Road Accident
1.	2011	1, 36, 834
2.	2012	1, 39, 091
3.	2013	1, 37, 423
4	2014	1, 41, 526
5.	2015	1, 48, 707

³³ 1994 (1) TAC 521: AIR 1994 MP 34: 1994 ACJ 471 (MP, HC).

³⁴ (1985)2 TAC 69: 1985 ACJ 288 (Punj).

³⁵ Source - National Crime Bureau Report 2015

Conclusion

The present paper is based on aforesaid discussion and I am in view of that the accidents carry high economic and social costs, which are not easy to measure. According to Justice Dr. Arjit Pasayat. Supreme court of India, the figure of compensation in such cases involves a good deal of guesswork. The cost of road related injuries and accidents can be viewed in terms of (a) medical costs (b) other cost related to administrative legal and police expenditure (c) Collateral damage in terms of damage to property and motor vehicle and (d) loss due to income foregone arising out of absence from work or impairment disability. Besides accident survivors often live poor quality of life and have to live with pain and suffering which is difficult to estimate. In economic terms, the cost of road crash injuries is estimated at roughly 1% of gross national product (GN.P) in low income countries 1.5% in middle income country and 2% in high income countries. For India the socio-economic cost road accident is estimated at 3% of GDP.

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