

TORTIOUS LIABILITY WITH REGARDS TO POOR ROAD CONDITIONS

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ABSTRACT

The high number of accidents and mishaps that occur because of improper road conditions is horrifying. There exists a great deal of red-tapism, and the government agencies frequently exculpate themselves from assuming liability in such occurrences. These issues leave the common populace with no legal remedy, and the government, which should be held liable, are often let loose from taking responsibility. According to the statistics available on the Ministry of Road Transport and Highways website, in the year of 2018 alone, a total of 14,290 accidents had occurred due to potholes that went unfixed and an appalling 2015 deaths due to the same¹. It is also worth noting that these statistics only reflect the reported accidents; the real figure could be much higher.

Year after year, scores of people end up injured much worse dead due to improper road conditions, which include but are not limited to potholes, uneven road surfaces, faulty road engineering, and non-durable road materials used for road repairs. This paper aims to look into India's present legal framework to deal with accidents occurring due to poor road conditions and further attempt to provide effective solutions to deal with the same. The author will likewise endeavour to see if civil liability under the tort of negligence can be invoked against the government agencies that are depended on with the obligation to maintain public roads in a safe and sound manner.

INTRODUCTION

The right to roads in reasonable condition is seen as a fundamental right under article 21 of the Indian constitution. The directive principles have been read into Article 21 to make life more meaningful and not mere its existenceⁱⁱ. Roads that are not duly maintained are a very serious public hazard which if left unchecked can result in enormous amounts of human injuries and death. A particular government agency maintains each public road and if such agencies are derelict in their duties to provide safe roads for transportation, they must be held liable for the injuries caused by their negligence. Roads in India are of very poor standardⁱⁱⁱ and the situation is exacerbated by monsoon every year, this results in bad road conditions, which pose a significant risk of harm to unsuspecting travellers.

The increasing statistics of accidents caused by poor road conditions in India mean that definitive action has to be taken by the legislation and courts to impose more stringent measures on public authorities to maintain roads in reasonable conditions, which clearly seems to be lacking.

THE PRESENT LEGAL FRAMEWORK

There is no explicit provision or statute within the existing legal framework of India to deal with accidents caused by poor road conditions; however, in the absence of any statutory provision or established principles of justice, courts are allowed to apply common law principles evolved by the courts in England on grounds of justice, equity and good conscience^{iv}. While the court may have the power to apply common law principles in deciding liability in accidents caused by poor road conditions, there is a pressing need for an exquisite provision within the current legal framework to deal with accidents caused by poor road conditions.

Poor road conditions can be caused by poor technique or inferior quality of material used for the construction of roads and while repairing the roads and filling the potholes, proper scientific methods are not used by government authorities who are negligent in their conduct leaving the common man as the real victim. The lack of specific provision related to negligence in the

maintenance of roads, often disables the victims from pursuing legal action and seeking remedy. It has been generally held by courts that the legal heirs of a person who suffers an accident due to poor road conditions are entitled to compensation.^v However, there are several conditions which need to be met before public authorities are held liable and compensation is awarded which again are not easy to prove in a court of law. It has also been noted in the case of *Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum*^{vi} that public authorities are normally only held liable for mis-feasance and not for nonfeasance. This clearly presents a problem to victims of accidents caused by poor road conditions as they can only file a suit for nonfeasance. The general principles of negligence related to misfeasance, nonfeasance, importantly nonfeasance should apply to public authorities in order to hold the involved public authorities liable.

While it has clearly been observed by the High Court of Bombay that if there is an injury caused to a citizen due to poor condition of streets as a result of negligence on the part of the Municipal and other Authorities, he/she has a right to seek compensation from the State or local authorities who are responsible for the maintenance of roads^{vii}. However, there needs to be a more concrete effort by the legislation and the judiciary to hold the involved Government authorities liable while simultaneously remedying the injuries suffered by victims of such accidents.

THE NEED FOR CHANGE

There are four essential elements that are required to prove negligence and claim recovery by the claimant; the existence of a duty, the breach of duty by the public authorities; a causal relationship between the accident and poor road conditions and damages that the claimant has incurred^{viii}. The state clearly has a duty of care towards citizens who use public roads for transport and it has also been held that the right to roads in reasonable conditions is a fundamental right guaranteed under article 21^{ix} of the Indian constitution. However, to prove that there had been a breach of duty by the public authorities the claimant has to show that his/her injury was caused as a result of poor road conditions and to satisfy the element of causation means that the claimant has to prove that the accident was direct and proximate cause

of government authorities being negligent which is hard to demonstrate in a court of law. Damages, on the other hand, should be proved by the injuries suffered by the claimant.

However, it is of paramount importance to note that claimants should be allowed to sue the involved government authorities under the widely recognized legal maxim of *Injuria Sine Damnum* as the very existence of poor road conditions in itself is a violation of a legal right vested in the citizens. One should not have to go through material damages in order to claim compensation from the Government for breaching a duty it owes to its citizens. It is reasonably expected for a public authority to foresee that the poor road conditions can and would cause accidents and an omission to maintain roads constitutes a breach of duty sufficient enough for a cause of action^x.

There is a pressing need for an exquisite provision that takes into account all of the present difficulties within the current legal framework which deals with the negligence and liability of government authorities attached to poor road conditions in order to hold the involved authorities accountable. The onus lies on the legislature to enact a specific law which deals with poor road conditions. The insufficiency of the existing provisions should act as an impetus to initiate legislative deliberations on this issue.

CONCLUSION

Vehicle users pay road taxes to have accessible roads in a safe and sound manner, and therefore, the government authorities are required by the law to construct and maintain roads in safe conditions. Government agencies need to stop passing the buck to one another and deliver upon their responsibility. Monetary compensation cannot compensate for the loss of human lives caused by government authorities' wilful ignorance and negligence. It is high time government authorities take corrective measures for poor road conditions before more lives are lost.

ENDNOTES

ⁱ Website of *Ministry of Road Transport and Highways*.

ⁱⁱ Public Interest Litigation No.71 of 2013, High Court of Bombay.

ⁱⁱⁱ Amit Bhatt, *India Has the Worst Road Safety Record in the World. A New Law Aims to Change That*, (<https://www.wri.org/blog/2019/08/india-has-worst-road-safety-record-world-new-law-aims-change#:~:text=Road%20traffic%20deaths%20have%20reached,Indian%20roads%20in%202018%20alone.>).

^{iv} *Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum* (1997) 9 SCC 552 (India)

^v *Marakkar vs State Of Kerala*, (2009) 4 KLT SN 33 (India)

^{vi} *Supra* at 4

^{vii} *Supra* at 2

^{viii} *Price v. Hurt*, 711 S.W.2d 84, 86 Tex. App, Dallas (1986).

^{ix} *Supra* at 4.

^x *Stokes v. United States*, No. 18-30572 (5th Cir. Oct. 18, 2018).