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Judicial Remedies in Law of Torts

Dipankar Kumar

ABSTRACT

Tort is a legal wrong and not a criminal offense. Tort means the infringement of a legal right of individual and simultaneously the legal duty of the person committing it is also violated. In torts, the aggrieved party is compensated by the wrongdoer. The compensation given to the injured party is in the type of unliquidated damages which are not predetermined and are decided by the court depending upon the seriousness of wrong committed. In tort there are legal remedies, which are checked or approved by the judiciary. If a wrong is committed against a party the court can ask the tortfeasor to compensate or return the belonging as they were to the injured party. In some cases, depending upon the seriousness of tort committed, even the court will convict the wrongdoer. There are two type of remedies in tort- Judicial remedies in torts law and extra judicial remedies in torts law. The research paper will deal with the judicial remedies which are provided by the judiciary or the court to the aggrieved party. The research paper will explain and analyses the different type of judicial remedies provided by judiciary in India. The primary goal of the analysis is to explain when and what type of judicial remedy will be provided by the court. Each judicial remedy is further classified into different types and these classifications is also explained in this research paper. For better understating of the topic, case laws are also included in the paper. In this paper research paper, I have used doctrinal method of research. Secondary data collected from books, articles, journals and internet is used in this research.

Keywords- civil wrong, legal right, infringement, compensation, unliquidated damages, judicial remedy.

INTRODUCTION

A matters in which legal right are involved remedies are given to the subject in a society to ensure justice and peace in that particular state remedies are types of compensation give to a person he suffered for the defect. It may be awarded to any person in different ways like it may be ordered by the court, granted by judgement after trail or hearing by agreement between the person claiming harm and the person who has caused it. There are some different forms of compensation open to the resident of a nation where some solution include some particular action includes any money to be compensated for any incurred includes any money to be compensated for any incurred induced by accident or violation of contract by certain people.

The scope of this research paper covers the definition of torts and the remedies in torts that is judicial remedies under the judicial remedies it also talks about the types of remedies that is define under the judicial remedies. Also, the different between judicial remedies and extra judicial remedies will be discussed because these are two remedies in torts.

The scope of this study also deals with the various type of judicial remedies and the type of remedies how they are different from each other.

DEFINITION OF TORTS LAW

Torts is a legal wrong and not a criminal offense. Tort comes under the category of civil wrong, but it is different from contract infringement and confidence abuse. Torts means the infringement of a legal right of individual and simultaneously the legal duty of the persons committing it is also violated. Everyone has a right to law and with that right there also comes a duty. So, two things are violated simultaneously when a tort is committed. In torts the aggrieved party is compensated by the wrongdoer. The compensation paid to the aggrieved party is in the form of unliquidated damages which are not predetermined and are decided by the court according to the seriousness of the offence.

"civil mistake in terms of which the compensation is a common law suit seeking unliquidated damages and it is not simply a violation of contract or a breach of confidence or some such provision on which is purely equal." – Salmond¹

There are three essential needs to be present to constitute a tort:

- Wrongful act or omission
- Legal damage
- Legal remedy

¹ DR. R.K. BANGIA, R.K. BANGIA'S LAW OF TORTS 4 (24th ed. 2017)

TYPES OF JUDICIAL REMEDIES

1. Damages
2. Injunction
3. Specific restitution of property

- **Damage**

After the tort is committed damage is a most important remedy for the plaintiff. Because the complainant should be paid in full for the damage incurred by the other party and also restore the position of the plaintiff this may be done by a payment of money. In leading case of SCOTT V SHEPHERD² A defendant made of gunpowder hurled a lighted squib from the street to the store where large crowds of citizens were gathering the squib lit up around yates wills hurled the quid around the street to avert harm to himself and yates next to Ryal lands the squib. Ryal took the squib and hurled it to another marketplace in order to prevent his own products from getting damaged. The squib lit the complainant plaintiff eyes were injured by the lighted squib combustible matter. The complainant has lost his eye usage plaintiff sued defendant for trespass and assault on the lighted squib for throwing casting and tossing. The jury rendered a plea verdict in favor of the applicant.

TYPES OF DAMAGES:

1. Nominal damages are those damages where plaintiff proves that defendant has committed tort against the plaintiff but there is no damage suffered by the plaintiff. If the civil right of the plaintiff has been violated but no harm has occurred thereby (*injuria sine damno*) the appreciation of his mistake the statute grants him negligible damages. in the case of *Ashby V White*³ the returning officer wrongfully disallowed a registered elector to voter in a general election, but it was noted that the elector had not suffered any defect and that the candidate for which he wished to vote has secured the election for which the defendant has been held responsible.

2. Contemptuous Damages- They are awarded once the court considers the, the claimant's action through technically thriving was while not benefit and will not have been brought. The claimant may be at risk of any expenses that the winning party usually get.

² Scott v Shepherd (1773) 2 W Bl. 892

³ Ashby v white (1703) 2 Lord Raym, 938;

- General damages – this damage is the sort of damage that should be incurred by the tort. Which is actionable per se and so there is no reason to say e.g. loss of credibility in libel suit.
- Special damages- the terms used by the claimant negligence which must be show as a part of the cause of acts in torts. where damage is said to be the gift of the action e.g. negligence, slander, nuisance.

3. Compensatory aggravated and exemplary damages. In this court may notice to check whether there is specific tort committed or not than its take decision. Its purposes of committing tort is to harm proper feeling of dignity and pride of the plaintiff than the aggravated damages may be awarded. It is a one type of damages for the compensating the other party these damages given when their greater injury happens. The incorrect and escalated harm is referred to as aggravated injury. The idea is not to punish the wrongdoer in granting such damages, therefore are “compensatory” in nature rather than punitive. Where the damages received outweigh the property harm incurred by the complainant in order to avoid such conduct in the future, the damages shall be define as “exemplary, punitive or vindictive”. In the matter of *Bhim sing v state of j&k*⁴ there was a wrongful detention in the case of bhim singh a member of legislative assembly was arrested and detained to prevent him from attending the assembly session then it was challenged in supreme court through a writ petition but at the judgement time bhim singh had been set free. There was now no need to order that he be set at liberty but the supreme court considered it to be an appropriate case for awarding exemplary damages amounting to Rs 50,000 to Bhim singh which the state government has to pay within 2 months while granting compensation.

- **Injunctions**

Injunction it is a type of order which is given by the court for doing of some act or preventing conduct or continuity of any act the court has the right to concede or refused this remedy. The injunction is various kind

1. A temporary injunction is an injunction which is continue until a specific time a temporary injunction is generally granted before the case has been heard on merit it is only provisional only court have power for this

⁴ *Bhim sing v state of j&k* A.I.R 1986 S.C 494

2. A permanent injunction shall be the order issued after the appeals has been concluded case since the argument has been made that the permanent injunction is meant to eventually resolve the conflict between the parties. A perpetual injunction is final order and is issued after the full consideration of the case.

Prohibitory and mandatory injunction.

Prohibitory injunction in this injunction defendant have not to do some act in negative way plaintiff have right to secure their rights and defendant do not interfere with the plaintiff's lawful rights like as plaintiff have lawful right to no one have to enter in his house so defendant should have to follow this act

Mandatory injunction in this injunction defendant have to do some positive act like as if there is a wall near the plaintiff house so plaintiff suffering problem due to this wall so it is a mandatory injunction for defendant to remove the wall because due to wall plaintiff house is blocked so defendant have to follow this.

- **Specific restitution of property**

This remedy is a third type of judicial remedies and this remedy is for restore the plaintiff position the court may grant or order a return of the particular property to the complainant after it has been unlawfully dispossessed of its moveable or immovable property.

DIFFERENCE BETWEEN JUDICIAL REMEDIES IN LAW OF TORTS AND EXTRA JUDICIAL REMEDIES IN LAW OF TORTS

The judicial remedies are a power of the court because such relief shall be given to the aggrieved party by the court or judge for the loss happen than court provides the compensation to the party for there loss suffered by the party for there loss suffered by the party

Judicial remedies are of three main type.

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

Extra-judicial remedies in the extra-judicial remedies if the injured party take law in there hand according to law and the injured party have all power that is known as extra-judicial remedies

These are of five principal types.

1. Expulsion of trespasser
2. Re-entry on land
3. Re-capture of goods
4. Abatement
5. Distress damage feasant

CONCLUSION

Judicial remedies is an important remedy for torts because under this people can recover there position by the help of judicial remedy if any wrong happen than the court have power to give compensation to the wounded party in the form of money that is not fixed its depend upon the loss happen under the judicial remedies the injured party will sue the wrongdoer and after the injured party get compensation in the type of unliquidated damages which is provide by the court.

Under the judicial remedies they are divided into many parts because each remedy has those ere own law that is fixed or treated by the court. In the damages there is nominal remedies it simply tells about the injuria sine damno its means if infringement of a civil right but no harm happen so party can sue under the nominal remedies like this only under judicial remedies, they are divided into parts so that injured party can easily recover their position.

Under this judicial remedy there are kinds of remedy so people can recover their position easily and the court of law can treat everyone equally so that everyone get equal justice.