
WHERE THERE IS BLAME THERE IS A CLAIM- AN ANALYSIS OF GROWING COMPENSATION CULTURE

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ABSTRACT

The term "compensation culture" was popularised by the media to characterise a society in which people seek monetary recompense for minor infractions and injuries through litigation. While the existence of a compensation culture is debatable, it is said to have caused a backlog of personal injury claims in the courts, increased legal fees and insurance premiums as a result of high damages, and forced employers to take drastic health and safety precautions to protect themselves from potential liability, among other things. The culture of compensation is defined as "an ethos which is based on which all misfortunes, except an act of God, are likely to be the fault of somebody else, and the plight should be lightened, or anyway marked with receiving money." The culture of compensation can therefore be considered as a sociological phenomenon; legal rules and statistics do not need to reflect it. There is a litigation crisis when "this change in social attitudes leads to undesirable levels of a formal dispute." In this particular research paper, the researcher has conducted a detailed study about the compensation culture along with the factors that affect the claims. The paper also consists of the details about the pecuniary and non-pecuniary losses along with various types of compensations available. The explanation of compensation under the Code of Criminal Procedure has also been studied in brief.

INTRODUCTION

"Compensation" as expressed in Oxford Word reference connotes what is given in reward, incomparable delivered. It is not the same as "harms". Harms comprise the amount of cash asserted or decreed to be paid in remuneration for misfortune or injury maintained, the worth assessed in cash or something lost or retained. Monetary harms are to be esteemed based on "full remuneration". This idea was first expressed by Master Blackbury in *Lingstone v. Rawgarda Coal Co2*. Law of Torts is established on the rule that each injury should have a cure. Compensation is accordingly a demonstration which a court requests to be done or money which a court requests to be paid by an individual whose demonstrations or oversights have caused the

harm or injury another altogether that subsequently the individual damnified may get the equivalent incentive for his misfortune or be made entirely in regard of his physical issue. A claim isn't conventionally utilized as identical to harms even though remuneration may regularly be estimated by a similar standard as harms in an activity for a break. Compensation should be comparable with the limit of the charged to pay as additionally different realities and conditions of the case like the gravity of the offence, necessities of the casualty's family must be thought of. If material on record is insufficient, the court should survey the quantum from the material accessible and consider current realities of which it can take legal notification. In short, the court can decrease or upgrade the compensation granted.

The word compensation is of an exceptionally wide implication. It might establish real misfortune or anticipated misfortune and may reach out to pay for physical, mental or even enthusiastic misery, affront or injury or misfortune. The honour of compensation should be made under various and separate heads and should fluctuate from case to case contingent upon the realities of each case. No firm guideline, hence, can be set down in such a manner. The 'compensation culture' has featured frequently in the popular press over the last decade. The phrase 'compensation culture' is an amorphous term and can be applied to a range of claims, including personal injury, employment and Human Acts claims, and to specific aspects within them (such as the number of damages awarded, the propensity to sue). Taking on various definitions of the compensation culture, the reports about it stated that the claims which are most commonly featured in the media are a majority of small payments.

The fear of litigation can have some positive effects, but too great a fear- and the encouragement of misconceived or trivial claims that can clog the system for those with serious claims. The dissemination of urban myths, the trivializing of claims and reporting of the claims without mentioning the outcome has had injurious effects¹.

In simple words, Compensation Culture is defined as *"a system where people are ready to go to law over even relatively minor incidents in the hope of gaining compensations"*.²

The remoteness of Damages:

¹ Journal of Law and Society Vol. 37 no. 4 December 2010 By James Hand.

² Collins Dictionary of Law © W.J. Stewart, 2006

The term 'Remoteness of Damages' alludes to the lawful test utilized for choosing which kind of misfortune brought about by the break of agreement might be repaid by compensation of harms.

In the case of *Simmons v British Steel*³ the summary of the principles to be involved while considering the question of Remoteness of Torts by Lord Rodger. The summary reads:

“These authorities suggest that, once liability is established, any question of the remoteness of damage is to be approached along the following lines which may, of course, be open to refinement and development”

“(1) The starting point is that a defender is not liable for a consequence of a kind which is not reasonably foreseeable.⁴

(2) While a defender is not liable for damage that was not reasonably foreseeable, it does not follow that he is liable for all reasonably foreseeable damage: depending on the circumstances, the defender may not be liable for damage caused by a novus actus interveniens or unreasonable conduct on the part of the pursuer, even if it was reasonably foreseeable.⁵

(3) Subject to the qualification in (2), if the pursuer’s injury is of a foreseeable kind, the defender is liable, even if the damage is greater in extent than was foreseeable or it was caused in a way that could not have been foreseen.⁶

(4) The defender must take his victim as he finds him.⁷

(5) Subject again to the qualification in (2), where personal injury to the pursuer was reasonably foreseeable, the defender is liable for any personal injury, whether physical or psychiatric, which the pursuer suffers as a result of his wrongdoing”.⁸

In *Corr v IBC Vehicle*⁹. where the above rundown was cited and applied, Corr was utilized as a support engineer by IBC vehicles, the litigant. In a mishap that occurred in June 1996 in light of the penetrating of obligation or carelessness of the litigant, Corr endured serious wounds on the correct side of his head. He went through a long and excruciating reconstructive medical procedure. He stayed deformed, tirelessly experienced shakiness, mellow tinnitus and extreme

³ *Simmons v British Steel Plc*, (2004) UKHL 20

⁴ *McKnew v Holland & Hannen & Cubbits (Scotland) Ltd.* 1963, 3 ALL ER 1621 at 1623 per Lord Reid

⁵ *Lamb v Camden London* 1981 QB 625.

⁶ *Hughes v Lord Advocate*, 1963 AC 837.

⁷ *Hay or Bourhill v Young*, 1943 AC 92.

⁸ *Page v Smith* 1996 AC 155

⁹ *Corr v IBC Vehicle* 2008, 2 All ER 943 (H.L.) para 8.

migraines and trouble in dozing. He likewise experienced post-horrendous pressure issues. Additionally, because of the mishap, Corr became discouraged, a condition that deteriorated with the entry of time, and created self-destructive inclination. A clinician analyzed his condition as one of 'serious tension and gloom'.

In May 2002, while experiencing serious sadness Corr ended it all. In June 1999 Corr had organized procedures guaranteeing harms for the physical and mental wounds endured by him. After his demise, his widow was subbed as petitioner and asserted harm for the advantage of the bequest. She additionally asserted harm as a dependant for herself under the Fatal Happening Act, 1976. It was just the last case as a dependant that was challenged and came up before the Place of Masters in allure by the respondent. But the appeal stands dismissed.

RESEARCH QUESTIONS

- 1 What is Compensation Culture? What are the various facts related to the same?
- 2 How are Non- Pecuniary and Pecuniary losses related to the Compensation Culture?
- 3 What are the various types of compensation awarded?
- 4 What are the provisions of compensation under the Code of Criminal Procedure 1973?

REVIEW OF LITERATURE

With the primary research of the topic, the researcher concludes that there are enough sources available for the researcher to conduct meaningful and efficient research. Different sources provide a detailed description of the topic. The researcher currently deals with the topic of Compensation. To obtain a clear picture of the same, the researcher referred to **The Law of Torts**¹⁰ authored by Ratanlal & Dhirajlal which is a comprehensive book on the law of torts. The book gives in-depth information about the compensation laws and provisions.

To add to the efficiency of the research, numerous journal articles were also referred to. **The Compensation Culture- Cliché or Cause for Concern?**¹¹, a journal article that talks about the

¹⁰ Ratanlal & Dhirajlal, The Law of Torts (Lexis Nexis, 2020).

¹¹ James Hand, The Compensation Culture- Cliché or Cause for Concern 37(4) Journal of Law and Society , pp. 569-591.

growing compensation culture in the present time, also whether it should be considered a matter of concern or not. **Compensation Culture Reviewed- Incentives To Claim and Damages levels**¹², was also studied to get a clear view of compensation culture and the various facts relating to the same. It gives a clear picture of the factors responsible and the historical development of the maxim.

Law of Torts by B.M. Gandhi¹³ is another book that was referred to add to the efficiency of the research. The book is a detailed description of various definitions given by jurists. This would help in a better understanding of the facts and information. This book also gives information about the provisions and circumstances under which compensation can be demanded under other statutes.

Many cases concerning the topic of compensation exist, they were also referred to establish the connection between the facts of the topic and the judgments proclaimed in the cases relevant to the topic. The judgment pronounced in the case **Simmons v British Steel** the principles to be involved while considering the Remoteness of Torts was summarized. It was held that certain factors are to be considered while questioning the remoteness of the tort. **Rookes v. Barnard**, in this case, it was held that three conditions should be fulfilled to avail the exemplary damages.

COMPENSATION CULTURE

If we analyze the expression "compensation culture" itself, we can make a comparative examination. The expression has a wide scope of implications. It has come to be utilized as an expansive catch-all term to envelop an assortment of concerns, including numerous which depend on a falsehood about the suit framework and bias about legal advisors. At its heart, as we will see, there is for sure proof which underpins the requirement for cautious checking of what occurs in our misdeed framework. In any case, the distinguishing proof of potential and genuine issues in that framework has empowered a wide range of allegations to be levelled, a considerable lot of them without exact establishment. The ills have been excessively handily laid at the entryway of shady legal counsellors, deceitful inquirers' or corrupt cases organizations. One of those ills is that an expanded weight has been set upon society from the increasing

¹²Richard Lewis, Compensation Culture reviewed- Incentives to Claims and Damages Levels, December 2014.

¹³ B.M Gandhi, Law of Torts (Eastern Book Company, 4th Edition).

expense of individual injury prosecution and this is the importance related to "compensation culture".

The number of claims is rising constantly with every year. The number of claims exceeds the number of claims recorded in the previous year. The two major factors that cause a rise in the claims are- Institutional & Personal.

5.1 INSTITUTIONAL FACTORS

Our propensity to claim is influenced by the foundations engaged with individual injury practice. For example, the significant part of worker's organizations in encouraging claims for work mishaps and illnesses has been recognized. The normal reference of workers union assisted claims to particular law firms led to the first specialized personal injury representation for injured claimants. The workers have free access to the lawyers, who help them bring a tort claim. Three different foundations that affect the claims are- Liability Insurer, Claims Management Companies & Claimant Law Firms.

5.2 PERSONAL FACTORS

Apart from the institutional factors, there are personal factors of the individual claimant that can cause an increase in the number of claims. It is based on "naming, blaming and claiming" i.e. primarily the person has to realize that he has suffered the loss, then the individual has to ascribe the responsibility and then the only one can seek compensation for the loss suffered. The expansion in cases is the aftereffect of an intricate blend of changing personal factors which influence the three factors of this analysis.

Today we are more likely to identify the harm caused and sue the wrongdoer. The existing social norms also encourage people to claim compensation for the loss suffered. The remote perceptions about the lawyers and the legal expenses have also been changed with time causing a hike in the number of claims.

PECUNIARY AND NON- PECUNIARY LOSSES

6.1 NON PECUNIARY LOSSES AND INCREASING THE PRICE OF PAIN

Compensation provided for pain and suffering often act as an incentive to the claimants. As a rule, it is the lone head of individual injury harm that is looked for. There are many reasons for

the same, the most significant being the change made because of the experiment of Heil v Rankin [2000]¹⁴ he appointed authorities to accept the open door to raise compensation for pain, suffering and loss of amenities. They increased the number of claims for more serious injuries by up to a third. Regardless of whether the reasons given justify the increase, the claims have substantially risen.

Damages have been additionally raised due to the utilization of the newly laid principles. The overall expansion is especially because the largest part of these damages made for pain and suffering given by the system is for non-pecuniary losses. The purpose behind this lies in the way that the misdeed framework overwhelmingly manages little cases, the extraordinary dominant part of the cases are of modest quantity. In these cases petitioners endure practically nothing, assuming any monetary misfortune from bodily injury. They make a full recovery and have no proceeding with sick impacts. The commonplace injury includes a whiplash, these establishing practically a large portion of the cases in the framework. Aside from recovering the expense of harm to the vehicle, the case is typically just brought to recover the compensation for pain and suffering. Much of the time, thus, non-pecuniary loss gives the simple impetus to sue for an individual injury.

Paradoxically, it additionally represents a significant part of the unbalanced expense of the suit framework and it gives occasions to distortion of misfortunes and deceitful cases. Thus, it is the main driver of huge numbers of worries about compensation culture.

6.2 PECUNIARY LOSSES AND THE REAL FINANCIAL WORLD

The cause of the increase in the level of the compensation awarded in the tort law is linked to the principle of putting the claimant back in the situation he/she was in before the tort took place. In attempting to give pragmatic impact to this frequently simply explanatory point, judges have been constrained as of late to go up against the real factors of the monetary world. This has prompted a significant increase in the damages, particularly in the case where serious injuries are sustained. The most notable way in which the personal injury litigation practice existing nowadays is different from that of a generation ago is in the extensive use of expert evidence.

In serious injury cases, specialists have been utilized in zones that reach a long way past the conventional clinical fields. They presently think about all parts of the harmed individual's life

¹⁴ Heil v Rankin (2000) EWCA Civ. 84

and future requirements. This identifies with the second change in suit practice: guarantee plans are currently substantially more extensive than they used to be, halfway due to the contribution of these specialists. Attorneys have had the option to determine in significant detail what the petitioner will need later on. With master help, they have had the option to put more exact money related figures on what it expenses to address these issues. This level of detail has inevitably led to an increase in the value of claims. Future mortality figures, as opposed to those dependent on notable mortality, are currently utilized and these significantly increased damages. A subsequent change made to the tables identifies with the recompense made for the planned potential procuring limit of a debilitated petitioner. despite the expansion in compensation, it remains the case that claimants are probably not going to get "full" compensation; they are not back to the position they were in before the mishap.

TYPES OF COMPENSATION

There are four types of compensations available under the tort law:

7.1 Contemptuous- Under this kind the compensation awarded to the plaintiff has no moral justification but technically has a legal claim. Minimal sums are awarded to the plaintiff.

7.2 Nominal- The kind under which the plaintiff has not suffered an actual loss.

In the case *Ashby v. White*, 1703 (2) Lord Rayam, the defendant wrongfully refused to register a duly tendered vote of the plaintiff in the parliamentary elections in England. The plaintiff suffered no loss as the candidate to whom he wanted to cast his vote, got elected. The Court held the defendant liable for a sum of £ 5 along with the costs of the case¹⁵.

7.3 Ordinary- These damages are provided to compensate the aggrieved party for the loss they have suffered and to put the individual or the group of individuals in the same condition before they suffered a loss.

7.4 Exemplary- They are also called punitive, vindictive or retributive damages. They are awarded in special circumstances.

In *Rookes v. Barnard*, 1964 AC 1129, held that in following circumstances exemplary damages can be awarded¹⁶—

¹⁵ *Ashby v. White*, 1703 (2) Lord Rayam, 938.

¹⁶ *Rookes v. Bernard*, 1964 AC 1129

- (i) Where the plaintiff has been aggrieved by oppressive, arbitrary or unconstitutional action by servants of the Government, “though not when he is subjected to similar treatment by corporations or private individuals.”
- (ii) Where the defendant's conduct “has been calculated by him to make a profit for himself which may well exceed the compensation payable by him to the plaintiff Exemplary damages can properly be awarded when it is necessary to teach a wrongdoer that tort does not pay”.
- (iii) Where exemplary damages are authorized by the Statute.¹⁷

In the tortious liability redressal to the plaintiff is met with the damages. Damages depend upon the quantum loss suffered by the plaintiff.¹⁸

“In the case *Rehana v. Ahmedabad Municipal Transport Service*, MANU/GJ/0071/1976: AIR 1976 Gujarat 37, it was held that damages for personal injury may be given under the following heads—

- (i) “*Personal pain, suffering and loss of enjoyment of life*”.
- (ii) “*Actual pecuniary loss including any expenses reasonably incurred by the plaintiff*”.
- (iii) “*The probable future loss of income because of incapacity or diminished work capacity*”.

In this case, *Rehana* was a 16-year old girl, who got injured and received a permanent limp. She was entitled to get a compensation of Rs. 10,000 under the first head, and under the second head, she got Rs. 2500 for medical expenses and Rs. 7,600 under the third head. Out of the total sum of Rs. 20,000, 25% was deducted leaving a sum of Rs. 15,000 as total compensation. The Court also considered the diminished prospect of marriage due to this injury.”¹⁹

7.5 Interim Damages

The principles give that a court may arrange for the respondent to make an interim payment of such a sum as it might suspect just, not surpassing a sensible extent of the harms which are probably going to be recuperated at last by the offended party. Interim Damages must be arranged when (I) the respondent has conceded risk, or (ii) the offended party has acquired a

¹⁷ Law of torts e-book Manupatra.

¹⁸ Law of Torts Academic e-book Manupatra.

¹⁹ *Rehana v. Ahmedabad Municipal Transport Service* AIR 1976 Guj-37.

judgment against the litigant for harms to be surveyed, or (iii) if the activity continued to preliminary, the offended party would get a judgment for generous harms. In India, there are no legal guidelines. The High Court of Madhya Pradesh held that between time installment can be arranged in a suit on the relationship of the English Guidelines which can be applied. It was on this premise that the High Court permitted an installment of Rs. 250 crores in a suit for the benefit of Bhopal gas casualties and their dependents against the Union Carbide Enterprise.

Compensation under Code of Criminal Procedure 1973

To the extent that malicious prosecution is concerned the accused respondent may continue under Sec. 250 of the Criminal Procedure Code and claim compensation. As per the segment if in an objection dispatched before a cop or an officer if the magistrate clears the accused and as he would like to think if there was no sensible ground for making the allegation he may call upon the other party under Area 250(1) to pay compensation by a request made by him under Segment 250(2) failing which the defaulter would go through a detainment. However, it has been given by Sec. 250(5) that in any ensuing procedures against the complainant compensation granted under Segment 250(2) will be taken into account. Section 358 of the Criminal Procedure Code makes arrangements to pay remuneration to an individual baselessly captured. Under Sec. 357 of the Code, a trial court, appellate court or Session Court at the hour of condemning can order to pay compensation out of the fine forced: (i) to any individual who has endured misfortune or injury by the offence when he can recuperate claim in a civil court, or (ii) to an individual qualified for recuperating harms under Fatal Accidents Act when there is a conviction for causing passing or reduction thereof, or (iii) to a complainant for meeting costs appropriately brought about in the arraignment.

CONCLUSION

To conduct effective and detailed research about Compensation Culture, the research paper has been divided into sections. The initial part gives a detailed description of the concerned topic. It also talks about the various factors to be considered while compensating the claimant. In the subsequent parts, the various facts related to the compensation culture are discussed. This paper deals with the prominent factors that lead to the rise of claims. It also talks about the pecuniary and non-pecuniary losses and their respective roles in a compensation culture. The researcher has

also included the various ways in which the compensation is awarded and the provisions of compensation under Criminal Procedure Code 1973, to enhance the research.

LIST OF CASES

1. Simmons v British Steel Plc, (29 April 2004), House Of Lords.

McKnew v Holland & Hannen & Cubbits

1. (Scotland) Ltd. 1963, 3 ALL ER 1621 at 1623 per Lord Reid.
2. Lamb v Camden LBC [1981] EWCA Civ 7, [1981] QB 625.
3. High Vs advocate AC 837, 2 WLR 779, 1 All ER 705; 1963 SC (HL) 31.
4. Smith v Leech Brain & Co [1962] 2 QB 405.
5. Corr v IBC Vehicles Ltd [2008] UKHL 13; [2008] 2 WLR 499; [2008] 2 All ER 943.
6. Rookes v Barnard and others [1964] United Kingdom House of Lords 1, [1964] AC 1129.
7. Rehana v. Ahmedabad Municipal Transport Service AIR 1976 Guj-37.
8. Ashby Vs white (1703) 92 ER 126, (1703) 2 Ld Raym 938, (1703) 1 Sm LC (13th Edn) 253.
9. EDWIN LORD AND ANOTHER v. PACIFIC STEAM NAVIGATION COMPANY.
[THE "OROPESA.")(1942) 74 L.L.Rep. 86.