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OCCUPIER'S LIABILITY IN DANGEROUS PREMISES: A CRITICAL ANALYSIS

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Abstract

An occupier is a person who had actual control over a particular premise at a time when any sort of damage was caused. Occupier of certain premises owes a set a duties and responsibilities to ensure premise safety. Liabilities of the occupier need to be defined in order to ensure the aspect of individual safety including that of a trespasser. It becomes necessary to analyse these liabilities as well the conditions that are required to be satisfied in order to be held liable for the injury caused. The test of reasonableness as well as the aspect of negligence proves to be two solid foundations that are required while assessing the liability of an occupier in dangerous premises. The article aims to thoroughly analyse the aspect of the occupier's liability in dangerous premises as it is essential to understand about the circumstances in which an occupier can be held liable for an injury that occurred due to the dangerousness of the premise

Keywords: Occupier liability, dangerous premises, tort law, strict liability, absolute liability.

Introduction

An occupier can be considered as a person who is in possession of the premise or who has responsibility over the conditions and the activities carried on the premise and have control over the people who enter the premise. The usage of land cannot always qualify one as an occupier. An occupier is someone in "actual control of the premise at the time when the damage was caused"¹³. But it should not be inferred that complete control of the premises is essential for conferring liability. The injury should be caused due to the conditions of the premise or the activities carried out on the premise. An occupier of a premise owes a duty to warn of all the possible dangers and should make sure that his premises are safe¹⁴. The occupier is also responsible for the escape of any dangerous or harmful substance from his premise and is liable for the injury caused. Thus, it is important to identify the conditions which should be

satisfied for being held liable for the injury caused.

Invitees, licensees, and trespassers are the three classes of entrants who are commonly identified in a premise¹⁵. There was no duty of care on occupier towards the trespasser other than an obligation to refrain from causing grave injuries¹⁶. In the case of a licensee, the owner owed nothing more than that towards a trespasser¹⁷. This infers that they had to assess the dangers and subsequent risks arising from the premises all by themselves. But the Occupiers' Liability Act of 1957 imposed a 'common duty of care' on the occupier to all those who can be classified as either Invitee or Licensee. They both came under a category called 'lawful visitor'. Even then also there was no duty of care towards a trespasser. Then came Occupier's Liability Act of 1984 which identified the duty to persons other than visitors. Thus, reasonable care from injury was

¹³ Wheat v E Lacon & Co Ltd [1966] AC 552

¹⁴ Faraci, D., & Jaworski, P, To Inspect and Make Safe: On the Morally Responsible Liability of Property Owners. *Ethical Theory and Moral Practice*, Volume 17, and Issue 4 of 2014, pg. 697-709

¹⁵ James, F, Tort Liability of Occupiers of Land: Duties Owed to Trespassers. *The Yale Law Journal*, Volume 63, and Issue 2 of 1953, pg. 144.

¹⁶ Ibid, pg.146

¹⁷ Hayes v New Britain Gas Light Co., 121 Conn. 356, 185 A. 170 (1936).



guaranteed to a trespasser as well. The duty of care came into question only for the risks against which a reasonable care was expected from the occupier¹⁸. The reasonableness of the measures taken will be examined based on the facts and circumstances of the case. Negligence often determines the liability of the occupier. In general, an occupier is held liable if there was a negligence in taking reasonable measure of care. The occupier owes a special duty of care towards children. This duty is confined to the extent of warning the guardian on all the possible dangers and risks associated. This thus creates an uncertainty about the duty to unaccompanied children, including child trespassers.

An important aspect that needs to be considered while discussing about the occupier's liability is the landmark rule of 'Rylands v Fletcher' which ruled that 'a person will be responsible for all the harmful substances that he brings to his land at his own risk and will be liable for all the injury that may be caused if the substance escape from his premise and does some mischief¹⁹. This landmark case led to the evolution of the concept of strict liability which made one liable for the damages caused; even when there was no intent or negligence in his part. The concept of absolute liability is like strict liability; but was slightly modified. It imposes an absolute liability on an individual without any exception or limitation.

Indian law had made it clear that under the absolute liability principle, the occupier will be liable for the damages caused on the premise or those that were caused outside the premise²⁰. It can be understood that the liability of the occupier and the damages awarded were seriously discussed after the Bhopal Gas Leak tragedy in India.

It is essential to understand about the circumstances in which an occupier can be held liable for an injury that occurred due to the dangerousness of the premise. This will create a sense of duty and caution in the mind of the occupier and thus will ultimately result in ensuring individual safety. The duty towards a trespasser has witnessed considerable changes and thus it is relevant to analyse the path of progress and is meanwhile interesting to find out if there is any shortfall involved specially in the case of child trespassers. There are also certain conditions in which the injured is not entitled for claiming damages and the occupier is freed from any sort of liability. Also there needs to be an investigation on the kind of modifications that should be executed to improve the concept.

I. Circumstances:

There arises a multitude of situations in which an occupier can be held liable, hence here there will be a comprehensive examination of the important circumstances which are as follows:

a) An injury which arises due to a defect in the premise:

According to the 'Defective Premises Act' of 1972, a landlord owes a duty of care towards any person who is affected by the defects in the condition of the premise and a remedy should be provided for the same. In the case of ***The Municipal Corporation of Delhi vs Subhagwanti***²¹, the Supreme Court held that the principle of '*res ipsa loquitur*' (the mere occurrence of an accident is sufficient to imply negligence) existed and the municipal corporation had the duty to ensure the proper maintenance of all the constructions under it. Three persons died due to the collapse of the Municipal Clock Tower and their legal heirs claimed for damages from the corporation for negligence in repairing the defects of the tower which subsequently led to the accident. The corporation contested the argument by

¹⁸ Jenny Steele, Tort Law: Text, Cases and Materials (Oxford University Press, 3rd Edition; Pg. no:658).

¹⁹ Rylands v Fletchers (1868) LR 3 HL 330

²⁰ M.C. Mehta v. Union of India (1987) SCR (1) 819

²¹ Municipal Corporation of Delhi vs Subhagwanti, 1966 AIR 1750.



claiming that the defects of the tower cannot be discovered through a reasonable inspection and thus it cannot be held liable. But the court held that an occupier will be liable for both patent as well as latent defects within the premise²² and thus the corporation was held liable. The occupier has the duty to prevent any potential dangers or nuisance caused from the premises and thus can be held liable for a defective premise which may inflict danger to others.

b) When an injury is caused due to the escape of dangerous substances or the activities in the premise.

In the Indian scenario, this aspect of liability became significant with the advent of industrialisation. The Bhopal Gas Leak Tragedy increased the pace of identifying the liability of occupier in dangerous premises. It was in the case of *M.C Mehta vs UOI*²³ where the Supreme Court introduced the concept of Absolute Liability. The case was regarding the escape of oleum gas from one of the units of Sriram Foods and Fertiliser Industries. It was identified that when any hazardous activity is carried out in a premise, the occupier or enterprise has the resource to discover and guard against the potential hazards and to warn of all the possible dangers²⁴. The judgement laid down a new rule in which liability was decided if there was any inherently dangerous activities in the premise and the injury was caused due to these activities. The injury may be caused to a person who was either inside or outside the premise. Thus, this case law imposed an absolute liability on the occupier and was thus a landmark case in identifying the duty of an occupier in a dangerous premise. The rule in the M C Mehta case was challenged a couple of times and it was in the case of *The Indian Council for Enviro Legal Actions v UOI*²⁵ that the court reaffirmed that the Mehta case was appropriate and was

suitable for the Indian scenario. In the current case hazardous industries discharged toxic water into the surroundings and percolated into the soil leading to the destruction of cultivatable soil and making the drinking water unfit for human use. The industries were held liable for the same. Here the injury was caused to the activities in the premise and thus this was a clear case where the occupier can be held liable when an injury was caused.

c) When the occupier failed to perform a reasonable duty of care:

In general, the reasonableness test is employed in order to determine the liability of an occupier and can sometimes prove to be misleading as well. In the case of *General Cleaning Contractors vs Christmas*²⁶, the plaintiff who was an employee of a window cleaning company got injured by getting his finger trapped between two window panes and was not aware of the fact that the window had a chance of getting shut randomly and claimed for damages from the company. The defendants argued that since the worker was very much experienced, the company reasonably expected him to be aware of the condition of the window panes. The court held that the company had failed to perform its duty of care and must reasonably foresee that an injury may be caused to the worker and was supposed to provide the required safety guidelines.

II. Duty towards a trespasser:

There is a significant evolution in identifying the duties to a trespasser and progress can be understood by analysing a couple of relevant case laws.

The occupier generally claimed that the trespasser was neither a lawful entrant nor a neighbour of the premise. The outcome of the English case of *Donoghue vs Stevenson*²⁷ can be interpreted as a landmark judgement which implied that there can be circumstances in

²² Ibid.

²³ M.C Mehta v UOI, AIR 1987 965.

²⁴ Ratanlal & Dhirajlal, The Law of Torts, 28th edition, 2019 by Lexis Nexis, pg. 554.

²⁵ Indian Council for Enviro Legal Action v UOI, AIR 1996 SC 1446.

²⁶ General Cleaning Contractors v Christmas, [1953], AC 180.

²⁷ Donoghue v Stevenson, [1932]SC (HL) 31.

which a trespasser can also be considered as neighbour²⁸. The judgement in **Mokshada Sundari vs UOI**²⁹ needs to be critically analysed. In the case, a monthly passholder in order to renew it entered the railway line and died when struck by a railway engine. Here the court believed the deceased can be considered only as a trespasser even when the purpose of the visit was the renewal of the railway pass³⁰. Here it is understood that the court viewed the facts within a narrow perspective which cannot be applied to a wide range of situations. The person cannot be considered as a trespasser and even when it was so the railway could not have excluded from the duty of care owed. This was identified in the case of **Videan vs British Transport Commission**³¹ in which a child was trespassing a railway track and while trying to save the child, the father of the child was hit by the train and died. The House of Lords held that when an occupier can foresee the presence of a trespasser, the occupier of the premise is obliged to provide a common duty of care towards the trespasser. While analysing the judgement it can be inferred that the court was able to put a concept which identified the duty towards a trespasser. But while understanding the other side of the coin, the court was also of the opinion that the mere general possibility of injury towards a trespasser cannot prevent occupier from his liberty and freedom to carry out those activities in the premise. Generally, the judicial system considered a trespasser as an outlaw and it was in the case of **Cherubin Gregory vs State of Bihar**³² that the Supreme Court held that a trespasser was not an outlaw and the occupier is not entitled to inflict personal injury just on the sole fact of him being a trespasser. This will also infer that even when an occupier is doing something indirectly in the land, he should be aware of the serious injuries that may be caused to the trespasser. In the current case, a woman used the latrine of

her neighbour and frustrated by her act the neighbour connected a naked copper wire to the latrine which led to the death of the women.

III. Duty Towards children

One of the common problems involved while identifying the duty towards a trespasser is in differentiating the liability of the occupier towards adult trespasser and child trespasser³³. An adult is old enough to protect himself from an imminent danger whereas a child is unreliable and irresponsible³⁴. In **Glasgow Corporation vs Taylor**³⁵, a 7-year-old child who was unaccompanied entered the botanical garden maintained by the corporation and ate some poisonous berries which were present on one of the trees. The child died and the plaintiff was his father. The House of Lords held that the berries could be considered as a hidden danger and thus the corporation can be held liable. Here the facts of the case reveal that the tree was within the access of children and the garden was daily visited by a considerable number of children. But the real issue lies in deciding the degree of care that needs to be taken by the occupier towards children. In the case of children who are accompanied by their parents the duty of the occupier is confined to only warn the parent of all the possible dangers³⁶. Thus, there is no clarity with regards to the duty towards unaccompanied children. It is the reasonable mental capacity of a child at his/her age that needs to be considered in such circumstances. The occupier may claim that the child is too young and that it is generally foreseen to be accompanied by an adult. But it needs to be understood that this should not exclude the occupier the liability which may arise due to his negligence or breach of duty. In **Nitin Walia vs UOI & ors**³⁷, a 3-year-old child who visited a zoo with his parents was crippled when a tigress pulled out his hand by biting it.

²⁸ Law of Torts with Statutory Compensation and Consumer Protection, B M Gandhi, 4th edition, Eastern Book Company, 2011, pg. 369.

²⁹ Smt. Mokshada Sundari v UOI, AIR (1971), Cal 480.

³⁰ *Ibid.* Pg. 367

³¹ Videan v British Transport Corporation, [1963], 2 Q.B 650.

³² Cherubin Gregory v State of Bihar, (1964) AIR 205.

³³ Eldredge, Lawrence, *Tort Liability to Trespassers*, 12 Temp L.Q 32 (1937-1938).

³⁴ Prosser, William, *Trespassing Children*, California Law Review, Volume 47, 1959, pg. 427.

³⁵ Glasgow Corporation v Taylor, [1922], 1 AC 44.

³⁶ *Supra* note 6, pg. 650.

³⁷ Nitin Walia v UOI & ors, (2001) ACC 275.



The parents of the child argued that the zoo authorities were liable as the injury could have been prevented if iron mesh was installed in such a dangerous premise. But the zoo believed the injury could have been avoided if the child did not extend his hand out to the tigress and considered it to be a case of contributory negligence which will exclude their liability. But the court ruled that the occupier cannot escape from the liability by citing contributory negligence as a defence when there is a breach of care in its part and considering the injured to be a minor as well.

IV. Rectifications Needed?

The researcher is of the opinion that a proper set of specified guidelines needs to be drafted for the liability of Railways in injuries connected with it. There are several conflicting opinions which arise including the concept of a trespasser crossing a railway line in which one such case was analysed above in the *Mokshada Sundari*³⁸ case. Keeping the frequency of the railway accidents in mind there must be a proper study on this concept. In the case of *Mohd. Quamuddin & Ors. vs UOI*³⁹, a train struck two children while they were crossing a railway line. The parents of the children claimed for damages as the accident happened due to the negligence of the officials as there was no proper fencing and no safety measures were taken despite the knowledge that children regularly played in the vicinity of the Rail line. The court observed that the railways had taken proper safety precautions in warning the hazards involved while crossing a railway line and thus was not held liable.

Conclusion and suggestions

By analysing the abovementioned case laws, it becomes evident that an occupier of a premise is obliged to provide a duty of care not only towards the defects that can be reasonably discovered on investigation but also towards those defects which cannot be discovered so.

This is so because it will generate a sense of responsibility on the occupier in ensuring the safety of his premises and the occupier is obliged to take precautions if he is able to apprehend the presence of an individual in his premise; even if it is a trespasser as well. An occupier should be liable for all those injuries which are reasonably foreseeable. But the concept of foreseeability is 'subjective' and there must be a proper logical analysis of the facts of each case in order to decide the degree of liability. The duty towards children should be religiously preserved as there are cases in which a minor cannot be excluded from contributory negligence. This does not imply that the occupier should be held liable in each circumstance. The reasonability of the care taken may prove to be an important factor in it. An occupier is liable to a trespasser even when his presence is foreseeable and thus cannot misuse the defence of trespassing.

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