



loss, grief, liability: An empirical study on death related to tort

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Introduction:

The research paper provides an overview of existing research on the various aspects of tort law, including negligence, intentional torts, and strict liability. thepaper also explores the role of causation damage and the doubt of care in determining liability in wrongful death cases.

Additionally, it examines the ethical considerations involved in seeking compensation by explaining case laws.

Keywords: Wrongful Death, Survival Action, Causation, Damages, Negligence

Statement of problem:

Deaths related to tort refer to fatalities that occur as a result of the negligent, intentional, or reckless actions of another person or entity.

Despite the progress made in the legal and ethical understanding of deaths related to tort, the challenges remain the same. Quantification of damages accurately in wrongful death cases can be difficult.

Relevance of study:

Tort law has a huge range of civil wrongdoings. This includes the effect of death on the subsisting cause of action, the shortening of expectation of life, and how far causing death is an actionable tort.

The significance of deaths related to tort lies in the need to uphold justice. these cases often involve a complex interplay of legal and ethical considerations requiring a comprehensive understanding of tort law and its application to death-related cases

Literature review:

1. "Wrongful Death Damages in Tort Law" by Patrick O'Doherty (2019): This book examines the legal concept of wrongful death and analyzes the various models and approaches to calculating damages in tort law. It provides a comprehensive analysis of the principles, theories, and case law regarding the quantification of damages in wrongful death claims.
2. "Tort Liability for Death by Dangerous Driving: Comparative Analysis and Policy Considerations" by Neeraj Pandey and Bibhuti Bhushan Nayak (2018): This article examines the legal framework for tort liability in cases of death caused by dangerous driving. It discusses the criteria for establishing liability, the assessment of damages, and the role of insurance in compensating the victims' families.
3. "Compensation for Victims of Torture in Tort Law: A Comparative Analysis" by Evelyne Lagrange (2016): This article compares the compensation schemes for victims of torture across different jurisdictions and discusses the potential for tort law to provide remedies for victims of state-sponsored torture leading to death. It explores the challenges in attributing liability and quantifying damages in such cases.

Objectives of the study:

1. to examine the legal implications of death about tort
2. to explore the impact of tort-related deaths on victims' families and society
3. to assess the role of compensation in cases involving death and tort
4. to analyze the legal precedents and case laws related to death and tort

Hypothesis:

Despite the progress made in the legal and ethical understanding of deaths related to tort, the challenges remain the same. Quantification of damages accurately in wrongful death cases can be difficult

Research questions:

1. what can be made to improve the legal and social responses to death cases involving tort?
2. what are the common causes of death in tort-related cases and how do they vary across different types of torts?
3. what role do public opinion and media coverage play in shaping perceptions and outcomes of tort cases involving death?

Research methodology:

The methodology is done empirically and also refers and relies on different sources theoretically including books, magazines, articles

Research questions: (analysis)

1. what can be made to improve the legal and social responses to death cases involving tort?

A wide variety of claims are covered under the law of torts. The compensation claim is usually brought by the person who has sustained the injury against the person who is responsible for such injury. What would be the case if the person to whom the injury is caused dies? Can the representatives of the deceased claim for the compensation?

The topic can be studied under two broad heads:

1. How does the death of one of the parties affect the cause of action

2. How far is causing death actionable in tort

❖ the effect of death on the subsisting cause of Action

According to the English common law, no cause of action arises against the person who is dead. This rule was contained in the maxim “*Actio personalis moritur cum persona*”, the cause of action dies with the person, thus, if any of the parties die, the cause of action comes to an end.

Case: Balbir Singh Makol vs Sir Ganga Ram Hospital

Facts

A complaint was filed by Balbir Singh Makol against the surgeon alleging that his son died because of the blunder committed by the surgeon. While the proceedings were going on, the Surgeon died.

Held

The National Commission applied the maxim “*Actio personalis moritur cum persona*” and held that with the death of the surgeon, the cause of action has also come to an end and therefore, the legal heirs of the surgeon can not be made liable for the same.

➤ **The exception to the maxim “*Actio personalis moritur cum persona*”**

1. Action under contract

2. Unjust enrichment of tortfeasors’ estate

➤ The Action by or Against the Estate of the Deceased Law Reforms Miscellaneous Reforms Act, 1934

Section 1(1) of the Act provides that on the death of the person all causes of action subsisting against or vested in him, shall survive for the benefit of his estate.

Section 4 of the act provides that, if the damage has been caused because of the act or omission of a person and the person dies before or at the same time when the damage was

caused, then an action is deemed to have subsisted before his other death.

Section 1 (2)(c) of the act provides that the estate of the deceased can claim the funeral expenses in addition to all the damages that the deceased could have claimed up to the date of his death. Provided that the funeral expenses should be reasonable.

Case: Hicks vs Chief Constable of South Yorkshire(1992)

Facts

The estate of the two sisters brought an action against the defendants for the fear and terror that the sisters would have suffered before death.

Held

The House of Lords held that fear by itself, of whatever degree, is a normal human emotion for which no damages can be awarded

◆ Administration of Justice Act, 1982 ◆ Is causing of death actionable in tort? position in England: Fatal Accidents Act, 1976

1. dependency claim
2. bereavement claim
3. assessment of damages
4. disregard benefits
5. contributory negligence
6. position in India

The following are the ways to improve the legal and social responses to death cases involving tort:

1. Legal reforms:
 - a. Strict liability: Consider implementing or strengthening laws that hold individuals or entities strictly liable for causing wrongful deaths. This would place the burden on the liable party to prove their innocence rather than requiring the victim's family to prove negligence.
 - b. Compensation: Ensure that the legal system provides adequate compensation to the

families of wrongful death victims. This may involve reassessing and adjusting compensation limits, taking into account factors such as loss of income, emotional distress, and future financial security.

c. Expedited procedures: Establish expedited legal procedures for death cases involved in torts to ensure swift justice for the victims' families. Delays in legal proceedings can prolong the emotional trauma experienced by the families and hinder their ability to obtain justice.

opinion	percentage
To seek justice for the deceased	53.8%
To compensate the family of the deceased	15.4%
To deter similar negligent behavior in the future	30.8%

As per the survey, the primary objective of a wrongful death lawsuit, 53.8 percent think that to seek justice for the deceased whereas 30.8 percent of people think to deter similar negligent behavior in the future.

2. Social changes:

a. Sensitization programs: Conduct sensitization programs to raise awareness about the impact of wrongful death cases on families and communities. These programs can foster empathy and support for the victims' families and encourage societal accountability.

b. Victim support services: Strengthen victim support services to provide emotional, psychological, and legal assistance to the families of wrongful death victims. These services can help them navigate the legal process, cope with grief, and rebuild their lives.

c. Corporate responsibility: Encourage corporations and organizations to prioritize safety measures and ethical practices to prevent deaths resulting from negligence. This can be achieved through stringent regulations, enforcement, and public pressure.

2. what are the common causes of death in tort-related cases and how do they vary across different types of torts?

Common causes of death about torts can vary depending on the specific circumstances and types of torts involved. Some common causes of death in tort cases include:

1. Medical malpractice: Medical negligence can lead to wrongful death in cases such as surgical errors, misdiagnosis or failure to diagnose a serious condition, medication errors, anesthesia complications, or hospital-acquired infections.
2. Product liability: Defective products can cause fatal injuries, such as faulty automobile parts, dangerous pharmaceutical drugs, malfunctioning medical devices, or unsafe consumer products.
3. Negligent driving/traffic accidents: Reckless or negligent driving can lead to fatal accidents, including drunk driving, distracted driving, speeding, or failure to follow traffic laws.
4. Premises liability: Inadequate safety measures or maintenance of premises can result in fatal accidents, such as slips and falls, structural collapses, or inadequate security leading to assaults.

opinion	percentage
yes	53.8%
No, it should be shorter	30.8%
No, it should be longer	15.4%

As per the survey, people believe that the statute of limitations for filing a wrongful death lawsuit is appropriate as 53.8 percent of people say yes.

It is important to note that these causes of death in torts can also overlap with other types of torts, such as personal injury cases where the victim survives but suffers significant harm. The primary difference is that in wrongful death cases, the victim's death is a direct result of the negligence or wrongful act of the liable party, whereas in personal injury cases,

the victim survives with injuries

3. what role do public opinion and media coverage play in shaping perceptions and outcomes of tort cases involving death?

Public opinion and media coverage can have a significant impact on the perceptions and outcomes of tort cases involving death. Here are some ways in which they can influence these cases:

1. Perception of the victim and the responsible party: Media coverage often focuses on personal stories and humanizes the victims involved in tort cases. This can shape public opinion and sympathy towards the victim, potentially influencing the perception of the responsible party as negligent or at fault.
2. Bias and prejudice: Media coverage can introduce biases and prejudices that impact how individuals perceive the case. Depending on the nature and circumstances of the tort case, the media might portray the victim or the responsible party in a way that aligns with preconceived notions or biases, potentially influencing public opinion unfairly.

opinion	percentage
yes	61.7%
no	38.5%

As per the survey, 61.7 percent say that the family members of the deceased be allowed to sue for non-economic damages in wrong death cases, whereas 38.5 percent say no.

3. Pressure on legal processes: Public opinion and media coverage can create pressure on the legal system and influence the way cases are investigated, prosecuted, or defended. High-profile cases involving death may receive intense media scrutiny, which can shape the course of legal proceedings, including jury selection, trial strategy, and even the willingness of parties to negotiate or settle.

4. Damage to reputation: Media coverage can impact the reputation of individuals or entities involved in tort cases, regardless of their liability. Negative press coverage can harm a defendant's reputation before or during legal proceedings, potentially influencing public perception and even the ability to reach fair settlements.

As per the survey, 71.4 percent of people say that the burden of proof is higher in wrongful

death cases compared to other civil cases, whereas 28.6 percent of people believe that it should be the same.

opinion	percentage
yes	71.4%
No, it should be the same	28.6%

It is crucial to ensure that media coverage is balanced and accurate, enabling informed public judgment and fair legal processes. However, the impact of media coverage and public opinion can sometimes lead to both positive and negative consequences, potentially affecting the outcomes of tort cases involving death.

Conclusion:

Death related to tort presents a complex and multifaceted area in a study that requires a thorough understanding of legal principles and ethical considerations. By analyzing and exploring this intersection, we can improve the pursuit of justice and provide adequate compensation to the affected parties in these tragic circumstances.

Though the cause of action comes to an end with the end of life of the person, however, there are situations when the cause of action survives and legal representatives are entitled to bring action to claim compensation for the loss suffered by them.

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