

**Research on the concept of Damages under Indian Law**

As per Black's Law Dictionary (9<sup>th</sup> Edition):

*"Damages are money claimed by, or ordered to be paid to, a person as compensation for loss or injury."*

In context of the Indian Contract Act, 1872 - Damages are referred in context to breach of contract i.e. a party's failure to perform some contracted for or agreed upon act, or his failure to comply with a duty imposed by law which is owed to another or to society. The relevant Sections have been dealt with herein below:

Section 73, Indian Contract Act, 1872 - Compensation of loss or damage caused by breach of contract:

*"When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."*

*Compensation for failure to discharge obligation resembling those created by contract: When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*

*Explanation- In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account."*

Section 74, Indian Contract Act, 1872 - Compensation for breach of contract where penalty stipulated for:

*"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for."*

*Explanation: A stipulation for increased interest from the date of default may be a stipulation by way of penalty."*

**Concept:**

- The first paragraph of Section 73 deals with compensation for loss or damages caused by breach of contract. It states that where a contract is broken, the party suffering from the breach of contract is entitled to receive compensation from the party who has broken the contract. Compensation can be recovered for loss or damages:
- That arose in the usual course of things from such breach; or
  - Which the parties knew at the time they made the contract as likely to result from such breach.

- The second paragraph provides that no compensation is payable for any remote or indirect loss or damages.
- The third paragraph applies the same principles where breach occurs of obligation resembling contracts.
- The fourth paragraph i.e. the explanation to the section provides that while assessing damages, the mean which existed to the person claiming damages of remedying the inconvenience caused by non-performance, must be considered.<sup>1</sup> According to *BR Herman and Mohatta vs. Asiatic Steam Navigation Co. Ltd.*<sup>2</sup> it was observed that “The illustration to the section represents the general rules that can be followed while interpreting the section”.
- This section, however, provides that compensation shall not be awarded for any remote or indirect loss sustained by the parties.
- There are two principles regarding compensation that flow from this section:
  - Firstly, where money can substitute the loss incurred, the aggrieved party is to be put in the same situation, as it would have been in had the contract been performed.
  - This is qualified by the second principle, which imposes a duty upon the defaulting party to take reasonable steps to mitigate the consequences which arise as a result of the breach.
- In the event that loss is suffered, the court has the discretion to award the aggrieved party nominal damages in recognition of his right. Further damages may also be awarded for loss of the party's positive or exceptional interests in the case of contracts to be performed in the future. Improper recession of a contract may also result in compensation for loss of profit being awarded under Section 73 as was held by the Supreme Court in the case of *Dwarka Das vs. State of Madhya Pradesh*<sup>3</sup>.
- Section 74 emphasizes that in case of breach of contract the party complaining of breach is entitled to receive reasonable compensation, whether or not, actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to only reasonable compensation for loss suffered. But if compensation named is genuine pre-estimate of the loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party isn't

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<sup>1</sup>Pollock and Mulla on “Indian Contract Act and Specific Relief Act” (12<sup>th</sup> edition).

<sup>2</sup> AIR 1941 Sind 146.

<sup>3</sup> (1999) 1 SCR 524

required to lead evidence to prove actual loss suffered by him. The burden is on other party to lead evidence to prove that no loss is likely to occur by such breach<sup>4</sup>.

#### Precedents:

- In *Sitaram Bindraban vs. Chiranjilal Brijlalit*<sup>5</sup>, it was held that the parties to a contract can create, for themselves, special rights and obligations such as providing for themselves the measure of damages for breach. The Parties can also provide in a contract that in the event of breach, no compensation will be payable except for refund of amounts paid and such a term was held to be enforceable in *Syed Israr Masood vs. State of Madhya Pradesh*<sup>6</sup>
- In *Union of India vs. Raman Iron Foundry*<sup>7</sup>, it was held that damages are the compensation which an injured party may be entitled to get on adjudication by court of law but he does not get them by reason of any existing obligation on the part of the party, in breach of contract, who has no pecuniary liability till the court has determined the question of breach and the amount of compensation therefore. The court will not determine pre-existing liability.

#### Kinds of Damages<sup>8</sup>:

- General Damages  
General damages are those which arise naturally in the usual course of things from the breach itself. They are those which are presumed to be the natural or probable consequence of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered. They may or may not be capable of quantification in monetary terms.
- Special Damages  
Special damages are those which arise on account of the unusual circumstances affecting the plaintiff. They are not recoverable unless the special circumstances were brought to the knowledge of the defendant so that the possibility of the special loss was in contemplation of the parties. They are recoverable only where they were in reasonable contemplation of the parties at the time they made the contract. They represent the precise amount of pecuniary loss that claimant proves to have suffered.
- Nominal Damages  
They are awarded when there is infraction of a legal right and though it gives no right to any legal damages yet gives the right to a verdict because of the infringement.

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<sup>4</sup> R K Bangia on Contract Law – I (Sixth Edition)

<sup>5</sup> AIR 1958 Bom 291

<sup>6</sup> 1982 SCR (1) 894

<sup>7</sup> 1974 SCR (3) 556

<sup>8</sup> Mulla: Indian Contracts and Specific Relief Acts, 12<sup>th</sup> Edition

- Substantial Damages  
They can be claimed where a breach is proved even though the calculation of damages is 'not only difficult but incapable of being carried out with certainty or precision.' There was complete failure on one side to perform the contract.
- Aggravated Damages  
They are compensatory in nature and compensate the victim of a wrong for mental distress or injury to feelings in which injury has been caused or increased in manner in which the wrong was committed or the conduct of the defendant subsequent to the wrong.
- Exemplary Damages  
They are punitive damages and not intended to compensate the plaintiff but to punish the defendant.
- Liquidated Damages  
If a stipulation to pay a certain amount by way of penalty has been provided in the contract, then reasonable compensation not exceeding that amount should be paid. The essence of liquidated damages is a pre-estimate of damage, which is compensatory in nature. The question whether a sum is a penalty or liquidated damages is to be determined or understood by the parties, at the time of entering into the contract, and not as at the time of the breach. If the sum stipulated is far excessive in relation with the greatest loss that can conceivably be proved, it will be held by the adjudicators to be a penalty.
- Unliquidated Damages  
Where the damages haven't been provided and the court quantifies or assesses the damage or loss such damages are unliquidated.