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PRINCIPLES AND RATIONALE FOR CALCULATING DAMAGES



Abinash Agarwal

Senior Associate, MCO Legals

B.Com (Hons)

Zakir Husain College

Delhi University

LL.B, Faculty of Law

Delhi University

Expertise:

Corporate Litigation &
Corporate/Commercial Arbitration

✉ abinash.a@mcolegals.co.in



Abhilash Mahapatra

Associate, MCO Legals

B.A.

St. Xavier's College

LLB (Hons.)

GJALC, Bombay

Expertise:

Litigation & Corporate/
Commercial Arbitration

✉ abhilash.m@mcolegals.co.in

1. Introduction

1. According to Black's Law Dictionary- "Damages are money claimed by, or ordered to be paid to, a person as compensation for loss or injury".
2. Damages are not defined under the Indian Contract Act 1872 or under the law of Torts. Generally, the two types of damages awarded by the court are Liquidated & Unliquidated damages. Liquidated damages are those that are pre-estimated as a sum payable for a party's breach while unliquidated damages are not pre-estimated or fixed in nature.
3. According to Section 73 of the Indian Contract Act, 1872- The party who breaches the contract is liable to compensate the injured party for any loss or damage caused due to the breach of contract.
 - The loss or damage should arise as a natural consequence of the breach.
 - The damage should not be too remote but instead it should be something that the parties can reasonably expect to arise from the breach of a contract.
4. According to Section 74 of the Indian Contract Act, 1872- The Courts are allowed to award such reasonable compensation "whether or not actual damage or loss is proved to have been caused".
 - Generally sum named in the contract will be taken to represent reasonable compensation in any case where it is unable to assess actual
5. In the case of *Common Cause v. Union of India* [1999 (6) SCC 667], the Hon'ble Supreme Court gave the definition of the word "damages", "*Damages are the pecuniary compensation, obtainable by success in an action, for a wrong which is either a tort or a breach of contract, the compensation being in the form of a lump sum which is awarded unconditionally.*"
6. Damages are typically measured as follows:
 - Reasonable sum of the breach based as per the market value of which the aggrieved party has suffered.

- Costs of reasonable measures to bring about the situation that would have existed had the contract been performed properly

5 Elements of Damages:

2.1 Direct Losses

- The direct losses are the immediate losses accrued through the breach of a contract.
- The damages can be claimed if there is any actual loss, harm or injury caused but in cases where the contract sum is pre-empted in form of liquidated damages the actual loss need not be proved.
- There should be a legal right against that person due to whom the loss is caused.

2.2 Remoteness of the Damage

- One of the vital requirements for awarding damages is that the damage should arise in the usual course of the breach, or parties should know that such damage could subsequently arise before entering into the contract.
- In the landmark case of *Hadley v. Baxendale* (1854), "the rules enunciated in this case were that a party injured by a breach of contract can recover only those damages that either should "reasonably be considered...as arising naturally"
- The Hon'ble Kerala High Court held in the case of *State of Kerala v. K. Bhaskaran* [AIR 1985 Ker 49], that "The defendant is liable only for natural and proximate consequences of a breach or those consequences which were in the parties' contemplation at the time of contract. The party guilty of breach of contract is liable only for reasonably foreseeable losses, those that a normal prudent person, would have reason to foresee as probable consequences of future breach".
- The Hon'ble Madras High Court held in the case of *Madras Railway Co v. Govinda Rau* [1898 I.L.R 21 Mad 172], that "recovery of a sum on account of estimated profits by the plaintiff were too remote and do not fall

within the purview of Section 73 of the Contract Act”

2.3 Reasonableness of the Damage

- While awarding damages the Hon’ble Courts consider elements like loss of income, mental trauma, emotional injury, psychological injury, Loss of family services & Loss of enjoyment of life typically.
- Some of the judicial precedent that establish reasonableness while quantifying damages are as follows:-
 - Narendrasingh Motilal Johary v Karamchand Premchand [1969 10 GLR 584]
 - M/S. Herbicides (India) Ltd v Shashank Pesticides P. Ltd [SCC Del 2249]
 - Bharati Tower v Oil country Tibular Ltd [Arbitration Petition No 449 Of 2007]

3 Principle adopted by Courts for measuring Damages:

3.1 Generally damages have been granted in forms unliquidated damages where there is no objective calculus in pain & suffering. Though the evolving nature of law has given an opportunity to review how unliquidated damages should be compensated.

3.2 The Hon’ble Supreme Court in Organo Chemical Industries & Anr vs Union Of India [AIR 1979 SC 1803] had laid down the concept of Compensatory Principle.

- The compensatory Principle doesn’t aim on punishing the wrong-doer but rather compensate the person who had suffered.
- The general rule applicable in Compensatory Principle is that the awarding of damages especially of monetary in nature should place the claimant in the same position as the claimant was before the breach occurred.
- The Damages are awarded according to fair explainable compensation, market based compensation & no discrimination in compensation.
- The Compensatory Principle has been followed in numerous cases, such as
 - Tata Sons Ltd. v A.K. Chaudhary & Anr [2009 SCC Del 687]

- Time Incorporated Vs. Lokesh Srivastava [205 30 PTC 3 Del]
- Renusagar Power Co. Ltd vs General Electric Co [1994 SUPP 1 SCC 644]

3.3 The Causation Principle deals with a casual connection between the breach committed and the loss or damage suffered by victim as propounded by the Hon’ble Supreme Court in Rajkot Municipal Corporation vs Manjulben Jayantilal Nakum [1997 9 SCC 552].

3.4 This principle has been enumerated as follows:

- A casual connection can be established if the act of the defendant amounts to breach of a contract which is "real and effective."
- Whenever there are multiple causes, the "dominant and effective" cause is to be taken into consideration.
- Where the injury caused is too "remote" in nature, the establishment of causation would not conclusively make the defendant liable.
- In cases where there is contributory default or negligence by the plaintiff, this would disentitle the plaintiff to claim damages as it can be related to the principle of equity which states that, "He who comes into equity must come with clean hands."
- The Causation Principle has been followed in numerous cases, such as
 - Venture Global Engineering v Tech Mahindra [2018 1 SCC 656]
 - Pushpa Rani v Anokha Singh [1975 SCC Del 93]

4 Conclusion:

4.1 As India follows the common law system, the awarding of damages is based on judicial decisions. The judicial precedents play a vital role in the Indian Courts.

4.2 The principles and rationales adopted by the Hon'ble Supreme Court and various other High Courts have been very effective in dispersing justice concerning damages.

4.3 It can be said that damages are given by way of restitution and compensation only and not by way of punishment but the Courts also award punitive damages with a view to discourage and dishearten law breakers who indulge in violations with impunity. Dabur India v Ashok Aus-hadhi Udyog [2009 SCC Del 3019)