

2011

Legal Alert 2011

Compensation for Professional Negligence

The latest headlines of Bangladeshi Newspaper shows that people are suffering from negligence of builders [Bricks fell down from an under constructed building, on the head of a student and caused spot death], public servants, Doctors (death causing from the negligence and recklessness of doctors), lawyers and other professionals. Although huge compensations are recoverable in many law jurisdictions under the law of tort by filing suit for personal injury or damages caused from such negligent behavior, such precedents are rare in Bangladesh.

The law of tort is derived from common-law principles. The purpose of tort law is not to punish wrongdoers but to provide damages to victims as compensation for their losses. For example, monetary settlements are used as best as possible to restore the lives of victims to their condition before the accident.

The law of Tort is refers to a body of rights, obligations, and remedies that is applied by courts in civil proceedings to provide relief for persons who have suffered harm from the wrongful acts of others.

Remedies for tortious acts include money damages and injunctions (court orders compelling or forbidding particular conduct). Tortfeasors are subject to neither fine nor incarceration in civil court.

Although English Common Law principles are applicable in Bangladesh, but tort law is not introduced yet in Bangladesh as like the neighboring countries like India, not to speak of USA, Europe or Australia. According to Section 19 of the Civil Procedure Code, ***“suit may be filed for compensation for wrong done by a person or to a movable property”***. This enactment which clearly indicating claims for damages for wrongs committed under tort law developed in English common law are applicable in Bangladesh. Although in reality litigants rarely rely on such tortious principles to claim damages available under law and equity.

Due to which Bangladesh has become a heaven for repression/exploitation by offenders/wrong doers accelerating the process to increase the number of poor people in geometric relation. Internationally Tort law is used in a wide range into the series of cases. Recently Michael Jackson’s doctor has been sentenced to a maximum four years in jail for the negligence of treatment to the singer and was labeled “dangerous” by the judge.

The Hon’ble High court however shed some light on the overall situation in recent past, where medical negligence causing death are challenged in High Court and substantial compensation has been recovered by the victim’s family.

The doctrine of negligence arises from the ideas, in simple terms that, a person who can foresee that from his action or inaction it is very much likely that damages may cause to other person or property, that person owes a duty to care his action or inaction. (Capara Industries v Dickman [1990], 2 WLR 358; Peabody Fund v Parkinson [1985] AC 210; Davis v Radcliffe [1990] 2 WLR 358.).

The tort laws play a vital role in bringing civilizations. Suit for compensation for tortious wrongdoing allowing recovery of substantial damages should be brought into regular practice in our legal system as soon as possible.