TYPES OF DAMAGES AND AN ANALYSIS OF THE PRINCIPLE OF HADLEYS V. BAXADALE

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ABSTRACT

In this paper, we shall discuss the actual meaning of damages which we address or compensate to the plaintiff if found reasonable mentioned under Section 73 and 74 of *The Indian Contract Act, 1872,* forming the Expectation damages and the remoteness of the consequences of the breach as the basis for calculating the damages, that should be awarded as the compensation to the non-breaching party. The landmark case and judgement of *Hadley v. Baxendale* will also be broadly discussed and arguments around how it to some extent cuts off the possibility of foreseeability rather than opening doors for it will be made.

INTRODUCTION

The word "damage" comes from the Latin word "damnum," which denotes "pain, loss, damage or injury." It should be noted that there is a subtle distinction between the two words 'damage' and 'damages.' While 'damage' refers to the loss or injury to a person or property, 'damages' refers to the amount of money paid as compensation for a person's injury. The goal of damages is clear: to compensate the non-breaching party for the loss incurred by the breach of contract, as well as to replace the loss resulting from a breach. We may discover several types of damages in damages itself, such as liquidation, nominal, compensatory, special, ordinary, and so on. It all depends on the nature of contract that which one should be taken into consideration for which the court will require the breaching party to put you back in the position you were in prior to the loss or disadvantage. These all provisions are provided under Section 73 and 74 of *The Indian Contract Act, 1872,* which is the primary statute governing Indian contract law, and it covers laws governing the sale of goods, specific contracts such as indemnification, guarantee, bailment, and pledge, as well as agency and contracts connected to the sale of goods.

As discovered so far, damages are the solution and remedy for the non-breaching party. Broadly, there are two types of damages: consequential and incidental. As specified by law, the estimated money or compensation in the desired form should equal the injury or detriment sustained by either party. The consequences of either party's failure to perform or comply with the contract's conditions are restitutional. Considering this, it can't be ignored that yet there are defined damages as mentioned above, still procedure for calculating contract damages has never been uniform, nor has it come near to being uniform at any time. It's also worth noting that the methods and tendencies utilised in assessing such damages have varied during various periods. One of the case law which is regarded as most important while addressing this question is *Hadley v. Baxendale [1854*].

The notion that consequential damages can be recovered only if, at the time the contract was executed, the breaching party had cause to believe that consequential damages would be the likely result of breach arose from this famous contract-law case of *Hadley v. Baxendale* . The principle's standard of foreseeability has been somewhat stringent and inflexible, as it has been traditionally articulated. This formulation differs from the fundamental theory of contract law's expectation damages as well as the notion of proximate causation outside of contract law and

thus such a rule demands more interpretation and analysis which will also form one of the main arguments of this piece of work.

TYPES OF DAMAGES

The type of damages employed is determined by the goal for which damages are being sought. As a result, damages can be classified into one or more of the following categories, described in a summarized form to give an overview before jumping to the calculation of them:

A. General and special damages:

General damages are those that occur in the normal course of events, whereas special damages are those that occur in situations that were reasonably anticipated by the parties when they enter into the contract. When damage is established, general damages are supposed to follow, however, in the case of a claim for special damages, particular proof of the damage is required.

B. Nominal Damages:

When a party seeks damages from the court, the court has the authority to award nominal damages[1] This may be granted even if there has been no actual loss or injury to a party against whom a breach has been committed, or in circumstances where a legal right has been violated but no actual damage has been proven[2]. As a result, if a party fails to show actual loss as a result of a contract breach, nominal damages may be awarded. Furthermore, nominal damages may be given in the case of a technical violation of contract or when the breach occurred owing to an external cause not attributable to the defendant[3].

C. Substantial Damages:

In contrast to nominal damages, substantial damages are awarded when the amount of the contract breach is proven but the calculation is questionable.

[1] Chaudhary Construction Co. v. Delhi Development Authority (1998) 1 Arb LR 334
[2] Maula Bux v. Union of India 1970 SCR (1) 928; also see Vikas Electrical Service Pann Bazar Hubli v. Karnataka Electricity Board, AIR 2008 Kant 88
[3] Bismi Abdullah & Sons v. Regional Manager of FCI AIR 1987 Ker 56; Pran Nath Suri & Ors. v. The State of Madhya Pradesh AIR 1991 MP 121. See also, Akhoy Kumar Chatterjee v. Akman Molla & Others AIR 1915 Cal 154 (2) in which common law approach for grant of nominal damages has been followed.

D. Aggravated and exemplary damages:

Aggravated damages are significant when the plaintiff's damages are aggravated as a result of the defendant's motives, actions, or manner of inflicting injury, causing the plaintiff's feelings and dignity to be negatively affected, resulting in mental distress. They are primarily compensatory in nature, as they seek to compensate the plaintiff for the aggravated loss he or she has endured.

Exemplary damages, on the other hand, are punitive in character because they are intended to penalise the defendant rather than simply compensate or deprive the defendants of their profit.[4]

E. Liquidated and unliquidated damages:

In the event of contracts, the parties may agree to pay a specified amount if the contract is breached. Liquidated damages are what happen when such clauses are included in a contract. Unliquidated damages, on the other hand, are awarded by the courts based on an evaluation of the loss or injury caused to the party who has suffered a breach of contract.

CONSEQUENTIAL AND INCIDENTAL DAMAGES:

It's nearly impossible to tell the difference between the two, and Section 2-715 doesn't make it too easier. It simply lists categories of incidental damages and defines consequential damages in broad terms. This list is described as illustrative rather than exhaustive. The following is the most important judicial ruling on the topic:

While the distinction between the two is not an obvious one, the Code makes plain that incidental damages are normally incurred when a buyer (or seller) repudiates the contract or wrongfully rejects the goods, causing the other to incur such expenses as transporting, storing, or reselling the goods. On the other hand, consequential damages do not arise within the scope of the immediate buyer/seller transaction, but rather stem from losses incurred by the non-breaching party in its dealings, often with third parties, which were a proximate result of the

[4] Nilima Bhadbhade (ed.), Pollock & Mulla, The Indian Contract Act and Specific Relief Acts, vol 2 (updated 14th edn, LexisNexis Butterworths Wadhwa) 1173. See also, Organo Chemical Industries and Another. v. Union of India and Others (1979) 4 SCC 57

breach, and which were reasonably foreseeable by the breaching party at the time of contracting.[5]

"Extra expenses induced by the breach and incurred by the buyer in dealing with the contracted products or in effecting their cover," for example, could be a useful broad description of incidental damages. Everything else that isn't covered by the general damages provisions of Sections 2-712,20 2-713, and 2-714 and isn't covered by another rule of law would fall under Section 2-715's broad general definition of consequential damages (2). Regardless of how difficult it is to accurately classify the occasional element of damage as incidental or consequential, the issue is typically inconsequential to customers. Unlike sellers, who have only been allowed to recover incidental losses and not consequential losses, buyers have been allowed to recover both. Nonetheless, it appears that sellers are disclaiming liability for consequential but not incidental losses in contemporary standardised form contracts. It is evident that in circumstances involving such contracts, distinguishing between the two types of damage is critical. In one such case, the buyer spent costs in handling the products and getting insurance because the seller had contractually excluded obligation for subsequent losses. The court determined that these were clear examples of incidental damages not limited by the disclaimer clause. Damages for the cost of certain treatments or repairs to the goods were also claimed by the buyer. The evidence was insufficient to determine whether the expenses were incidental or consequential losses, and only the latter would be barred, according to the court. On remand, the question was returned to the trial court.[6]

Despite this ,distinction between the two is sometimes thought to be significant because incidental damages are simpler to claim under the Code, which imposes constraints on the recovery of consequential damages that do not ostensibly apply to incidental losses. Although both types of damages must be proven with reasonable confidence, Section 2-715(2) particularly mentions the historical requirements of foreseeability[7]and mitigation[8] in relation to

[5] Petroleo Brasileiro, S. A., Petrobras v. Ameropan Oil Co., 372 F. Supp. 503, 508, 14 U.C.C. Rep. Serv. (Callaghan) 661, 667 (E.D.N.Y. 1974).
[6] Frank's Maintenance & Engineering, Inc. v. C. A. Roberts Co., 86 Ill. App. 3d 980, 408 N.E.2d 403, 30 U.C.C. Rep. Serv. (Callaghan) 163 (1980).
[7] It refers to the likelihood that a person might have predicted the possible or actual consequences of their conduct. Courts consider foreseeability in breach of contract cases from the time the contract was created, not from the time the breach occurred.
[8] The doctrine of avoidable consequences, often known as the mitigation of losses doctrine, prohibits an injured person from claiming damages that might have been prevented with reasonable efforts. Following notice that one party to a contract does not intend to perform, the other party is expected to mitigate damages, which means it must make reasonable steps to avoid further losses as a result of the breach.

consequential damages. The buyer must show that "the seller had reason to know" of the loss "at the time of contracting" and that the loss "could not reasonably be prevented by insurance or otherwise." In the case of incidental damages, Section 2-715(1) makes no such restrictions explicit.

MEASURE AND CALCULATION OF DAMAGES:

The amount of damages that will be awarded must be distinguished from the amount of damages that will be granted. The former is concerned with the quantity of damages, whereas the latter also includes legal aspects. The evaluation of loss or damage resulting from such damage, especially in the context of unliquidated damages, becomes extremely important for assessing and calculating damages. Damages given in cases of contract breach are intended to return the party that has committed a breach to the position that would have prevailed if the breach had not occurred[9]. As a result, the amount of compensation given should not be greater than the loss sustained or projected to be suffered. To determine this, a principle of remotness[10] is taken into consideration which was elaborated further in the landmark case of *Hadley v. Baxendale*.

a. facts and judgement of the case

A miller in Hadley made a deal with a carrier to transport a broken shaft. Because the miller didn't have a spare shaft, he had to halt operations until a new one arrived. However, for some reason, delivery was delayed, and the miller sued for the profit lost as a result of the extended shut-down period. In this instance, the court determined that the buyer failed to adequately inform the seller of a potential contingency that could result in significant losses in the event of a contract breach. The buyer was not entitled to compensation for unforeseeable damages since the seller could not reasonably anticipate the buyer's losses. As a result, this decision created a consequential damage rule, according to which a plaintiff in an incomplete contract cannot be compensated for unforeseeable damages unless he warned the defendant of the potential unforeseen condition in advance.

[9] R.K. Malik v. Kiran Pal, (2009) 14 SCC 1

[10] The term 'remoteness of damages' refers to the legal test used for deciding which type of loss caused by the breach of contract may be compensated by an award of damages. In deciding whether the claimed damages are too remote, the test is whether the damage is such that it must have been considered by the parties as a possible result of the breach.

b. Critics of the Rule

At the outset, two fundamental elements of the Hadley v. Baxendale principle should be quickly presented. The principle is, first and foremost, a default rule. '" Essentially, the approach is used to restrict the liability of sellers. Sellers could still limit liability by contractual provisions that exclude consequential damages, set a dollar or formula limit on liability, offer varying liability limits in exchange for higher or lower prices, or substitute some other obligation for dollar liability, such as replacement or repair, if the principle were repealed.' Second, despite the fact that the concept is sometimes referred to as a "foreseeability theory," the traditional formulation and application of the principle eliminates most foreseeable harms which can be more understood by this foreseeability tests.

The first level in calculating is foreseeability in the traditional sense, which means that an event—in this case, damage of a specific type—could have been predicted. In that respect, practically every damage that occurs was almost certainly foreseen.[11] A second level of foreseeability necessitates not only that a certain form of damage might have been predicted, but also that the likelihood of this damage occurring was not insignificant. A third, and most difficult, level of foreseeability necessitates not only that the damage might have been predicted and that the likelihood of it occurring was more than marginal, or not small, but also that the damage was probable or extremely probable ex ante. Hadley v. Baxendale's approach, as conventionally defined and applied, raises the bar of foreseeability to the third, most stringent levels thereby excluding both damages that could have been known and damages that are reasonably foreseeable.

As a result, treating the Hadley principle solely as a foreseeability concept is erroneous, or at the very least simplistic. On the one hand, the principle eliminates the majority of expected losses. On the other hand, even if the Hadley v. Baxendale principle were repealed, a foreseeability constraint would apply in contract law as Liability in most areas of law needs simply a showing of proximate causation. Principle like this, is generally or should be based on some level of foreseeability. As a result, the decision between a Hadley v. Baxendale-based regime and a proximate cause-based regime is not a choice between culpability for predictable

[11] See Paul L. Joskow, Commercial Impossibility, the Uranium Market and the Westinghouse Case, 6 J. LEGAL STUD. 119, 157 (1977) ("In an objective sense, virtually nothing is truly unforeseeable to the extent that theoretically every possible state of the world could be enumerated and some probability assigned to its occurrence.")

losses vs liability for all losses caused in fact. Rather, it's a decision between opposing foreseeability criteria and competing times for applying the standard—when the contract is made versus when the contract is broken.

The case of *Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd*[12]. shows how far standardisation can go. Victoria Laundry specialised in laundry and dyeing. It had a boiler with a capacity of 1500-1600 pounds evaporation per hour, but it needed a boiler with a considerably larger capacity to expand its business. Victoria agreed to buy a second-hand boiler with a capacity of 8000 pounds per hour from Newman in April 1946 for?2150, loaded f.o.b. at Newman's premises, and delivered on June 5. T, a third employee hired by Newman, was in charge of dismantling the boiler. . While dismantling the boiler on June 1, T caused damage to it. As a result, Victoria did not receive her package until November 8, and she filed a lawsuit against Newman for lost income from June 5 to November 8. Victoria said that if the boiler had been delivered on schedule on June 5, it would have accepted "very profitable" dyeing contracts for the Ministry of Supply over the period from June 5 to November 8. The loss of profits as a result was estimated to be?262 per week. Victoria could not recover actual (individual) lost profits under the lost Ministry of Supply contracts unless the seller was aware of the prospect and terms of those contracts at the time the contract was formed, but Victoria could recover "some general [standardised]... sum for loss of business in respect of dyeing contracts to be reasonably expected," according to the court.

In tort suits[13], on the other hand, the potential plaintiff and defendant are not supposed to know each other. Considering which, unlike in a contract dispute, it does not seem rational to allow unexpected damages in any scenario, because it is pointless to allow unforeseeable damages to provide a suitable incentive not to impose costs on others if the defendant is unaware of the possibility. This argument is correct only if both the plaintiff and the defendant exercise caution

[12] Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd [1949] 2 K.B. 528 (Eng. C.A)

[13] One of the most famous tort cases regarding unforeseeability is *Vosburg v. Putney* (1891), which established the eggshell skull doctrine. Under the doctrine, a defendant is held liable for all the consequence of his action, even if the plaintiff had a pre-existing vulnerability or medical condition, such as if the plaintiff's skull is as fragile as an eggshell, and consequently suffered an unusually high level of damage. Another famous case, which is rather the opposite, is *Overseas Tankship v. Morts Dock*. In this case, a ship (Wagon Mound) owned by the defendant discharged oil while docked in the Sydney Harbor and the plaintiff's wharf was destroyed when the oil caught fire several days later, but the trial judge found for the defendant on the ground that he could not have been reasonably expected to know that the oil would be flammable when spread on water. This contrast comes from the distinction between unforeseeable damages and unforeseeable accidents. The eggshell skull case corresponds to the case of unforeseeable damages, while the Wagon Mound case corresponds to the case of an unforeseeable accident,

at the same time. The defendant may be able to deduce the true condition of the universe if their acts are performed in such a way that the uninformed defendant can observe the informed plaintiff's act of care. Although the plaintiff is unable to communicate directly with the defendant, he may be able to express (signal) the unanticipated existence of the contingency indirectly by his actions. On the other hand, even if a defendant has a slim possibility of learning the plaintiff's confidential information directly, he may have a significant chance of inferring it, which forms another reason to call this rule faulty.

The specific definition of foreseeability in the context of this regime should be based on the nature of the interest infringed upon and the wrong committed—on whether, for example, the injury involves harm to the person, physical injury to property, lost profits, out-of-pocket costs, or opportunity costs, and whether the breach was inadvertent or intentional. When it comes to lost profits or missed opportunities, the baseline criteria should be what I call reasonable foreseeability—whether the risk of damage was more than marginal, or not negligible.

Conclusion

The general principle of expectation damages is that the victim of a breach of contract is to be put in the position he would have been in had the contract been performed. In contrast, the special principle of Hadley v. Baxendale often leaves the victim far short of the position he would have been in if the contract had been performed. Classical contract law's penchant for certainty, liability-limiting devices, and established standards resulted in the development of a variety of artificial limits on anticipated damages in general and lost profits in particular which should not be the case and is entitled to be modified or should be acted upon on different lines.

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