DAMAGES

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UNLIQUIDATED DAMAGES
[S. 73 Indian Contract Act,1872]

73. Compensation for 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 the non-performance of the contract must be taken into account.

COMPENSATORY PRINCIPLE

- Compensatory not Penal
  - Robinson v. Harman [1848, Exch]
  - Ruxley Electronics and Construction Ltd v Forsyth [1995, HoL]
  - Golden Strait Corporation v. Nippon Yusen Kubishika Kaisha, The Golden Victory [2007, HoL]

- Limitations on Compensatory Principle
  - Remoteness
  - Directness
  - Mitigation

REMOTENESS & DIRECTNESS

- Damages must not be remote and should be directly related to the breach
- Remoteness
  - Hadley v. Baxendale [1854, Exch]
  - Victoria Laundries v. Newmann Indistries [1949, CoA]
  - Kaufos v. Czarnikow [1969, CoA]
  - Madras Railway Co. v. Govinda Rau [1898, Mad]
  - Simpsons v. London and North Western Railways [1876, CoA]
- Directness
  - Quinn v. Burch Bros [1966, CoA]

MITIGATION

- It is the duty of the aggrieved party to reduce the losses suffered by it, as much is possible through exploring reasonable means to reduce the same.
- British Westing House v. Underground Electric Railway Co [1912, HoL]
- AKAS Jamaal v. Moola Dawood & Sons [1915, PC]
- Murlidhar Chiranjeelal v. Harishchandra Dwarkadas [1961, SC]

LIQUIDATED DAMAGES
[S. 74 Indian Contract Act,1872]

74. 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.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

English Position

- Damages v. Penalty
    - Dunlop Pnuematic Tyres v. New Garrage & Motor Co. Ltd [1914, HoL]
    - Lamdon Trusts v. Hurrel [1955, CoA]
    - Cellulose Acetate Silk Co. v. Widness Foundaries [1933, HoL]

INDIAN POSITION

- Fateh Chand v. Balkishan Das [1963, SC]
- Maula Bax v. Union of India [1969, SC]
- DDA v. Kailash Nath Associates [2015, SC]

INDIAN POSITION (CONTD.)

The interpretation of the S. 74 has led to the following principles around the grant of Liquidated Damages:

1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the Court cannot grant reasonable compensation.

2 . Reasonable compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

3 . Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.

4. The Section applies whether a person is a Plaintiff or a Defendant in a suit.

5. The sum spoken of may already be paid or be payable in future.

6 . The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

7 . Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application.

(See. DDA v. Kailash Nath Associates [2015, SC])

THANK YOU