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Know All About The Defence of Volenti Non Fit Injuria

Aparna Shukla · 12 Jan 2021

General Defences, as the phrase indicates, are like weapons in the hands of the defendants (also called 'tortfeasor') which help them evade liability. One of such defence is ***Volenti Non Fit Injuria.***

This phrase derived from Latin translates to: "**to a willing person, injury is not done**," In simple words, it states that when a person voluntarily consents to a risk of injury, being aware of the consequences of it, then that person cannot bring a claim against the other party, for any injuries suffered.

What is consent?

Consent under the Law of Torts has two elements involved in it. They are:

Knowledge of the party + Voluntary agreement to the risks

Therefore, if **both** of the above elements are present in a Tort, then the defence of *Volenti Non Fit Injuria* can be claimed.

To understand this better, let us examine the following examples:

1. You go to watch a cricket match in the stadium and the Captain Cool M.S. Dhoni hits the helicopter shot. The balls rise high towards the crowd and it happens to fall on your head, thereby causing injuries to you.

The injury caused to you was deep and you suffered some losses in medical expenses. Frustrated, you sue M.S. Dhoni for causing such serious injury to you. Will you succeed? You will not. Why so? When you purchased a ticket to watch a match in an open stadium, you impliedly consent to the risks involved in it.

In the present situation, you very well knew that there was a possibility for such situations to occur. Despite knowing the risks involved, you willingly decided to watch the match at the

stadium. Therefore, your claim will not succeed. This is an example of implied consent.

1. Similarly, when you visit a certain place you find placards or posters stating “We are not responsible for any valuables misplaced.” This signboard is an indication that you have given an expressed consent to the risk of losing your items. This is an example of expressed consent.
2. While playing Soccer, a player from the opposite team injures you. Will your claim against him succeed? No, because you have voluntarily consented to the risks of the game.
3. You were walking on the right side of the road and get hit by a motorcycle. Will your claim against the motorcyclist succeed? No, because you very well know the risks involved in walking on the right side of the road.
4. You go to a circus show. During the show, due to the imbalance of the sticks, the lion on top of the sticks falls on you and thereby causes injuries to you.
5. You are working in a factory that makes steel items. There is a lot of electrical work that is involved in it. While working, few of the sparks enter into your eyes thereby causing you vision problems. Will your claim succeed against your employer? No. Because your acceptance of the job opportunity is an indication of you consenting to the risks involved in the work.
6. An occupier of a premise placed a board stating: “Beware of dogs!” You trespass (usage of the premises of the occupier without his consent) through the land of the occupier to go to the other side of the road and get bit by the dogs. Will your claim against the occupier stand? No. Because firstly, you have been trespassing through his land which is not acceptable under the law. Secondly, despite the board explicitly stating the risks involved, you have still chosen to use the premises of the occupier as a passage.

What can be drawn as a common ground from the above examples, is how the plaintiff cannot succeed against the defendant due to him voluntarily consenting (knowledge of the risk + agreeing to do it) to the risks involved in the above acts.

However, this defence has exceptions:

(i) Negligence of the other party:

Remember one thing: you consent to the risks of the game but not the negligence of the other party**.**

To understand this better let us examine the above facts with a little twist in them:

1. You go to watch a cricket match and in the middle of the match suddenly a steel plank from the top of the stadium falls on your head and injuries you.

The injury caused to you was deep and you suffered some medical expenses. Frustrated you sue the stadium authorities for causing such serious injury to you. Will your claim against the stadium authorities succeed? Yes, it will.

Understand this: The facts discussed above and here being more or less similar. In the present case, you have consented to the risks of the game such as the ball hitting you or anything likewise but you have **not consented to the negligence of the stadium authorities**. It is the duty of the stadium authorities to maintain the stadium properly. Therefore in the present case, your claim will stand.

1. A soccer player consents to being hit and to the other expected injuries of the game but does not consent to his opponent punching him, paralyzing him, or doing any other activity outside the usual terms of the game.

Therefore, if a player punches another in such a manner to cause grievous hurt to him, then the defence of *Volenti Non Fit Injuria* will not stand.

1. You are walking by the road and it is implied that there might be accidents that can be caused. However, a person drives a car rashly thereby injuring you. In this case, you have consented to the usual terms of using the road but not to the negligent use of the car driver. The car driver owes a duty of care to all those using the roads.
2. You visit a circus, you can be held liable only to the extent of the risks involved in watching the show. It is not extended to any negligence of the circus authorities for not properly maintaining the animals and other infrastructure of the circus etc.
3. According to the employment contract, you have consented to the risks involved in the due course of your work. Your consent ends there. In case, you are injured due to the negligence of your co-employee then you can claim compensation from your employer. Because this does not fall under the risks that you have consented to.

(ii) Rescue Cases

To understand this defence let us take the very same case of the cricket stadium. You go watch a cricket match and you see a steel plank falling from above and you realize that a child is standing below it. To save the child, you go ahead and try to push the child away from the steel plank.

Eventually, the steel plank falls on you and thereby causing injury to you.

The injury caused to you was deep and you suffered some injuries. Frustrated you sue the stadium authorities for causing such serious injury to you. Will you succeed? Yes, you will. How? A question might arise that here you have consented to the risk of saving the child and hence the Stadium authorities cannot be held liable.

However what you must appreciate is, under the Law of Torts, **a rescuer is not considered to have voluntarily accepted to the risks**. In this case, your actions do not contain your consent. Therefore, in this case, your claim will stand not only because you wanted to rescue the child but also for the negligence of the stadium authorities for not maintaining the stadium properly.

However, it is also seen that sometimes a person doesn't need to rescue, and yet the person acts in rescue thereby claiming the defence. Then his claim will not succeed.

(iii) Illegal acts

To claim the defence of Volenti non fit injuria, the act committed by the defendant must not be illegal or unlawful**.**

To understand this let us consider the following example:

Ram and Shyam are friends. Ram kills Shyam stating that he has consented to it. Can Ram be excused under the defence *Volenti non fit injuria*? No. Why? Because the mere act of killing a person cannot be justified under the law. Consent to illegal acts is not considered as valid.

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