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The Concept of Contributory Negligence Explained!

Aparna Shukla · 18 Jan 2021

In order to understand what Contributory Negligence is, let us first get a basic idea about what negligence is. The term '**negligence**' means *the failure to take proper care of something.* In simple words not being diligent is negligence.

Now, what is contributory negligence?

Contributory negligence is the failure of both the plaintiff and the defendant to take proper care, for their actions. It is a defence under torts. Therefore, if the **plaintiff** has **contributed to the damage** by **being negligent**, then he can be guilty of **contributory negligence** along with the defendant.

Let us consider the following examples in order to understand this well:

You are going to get some groceries for your mother. In order to not get bored on the way you put on your headphones and keep walking to the grocery store. The grocery store is on the other side of the road. You keep walking and then suddenly decide to cross the road.

The car coming from the other side was driven rashly and you did not bother to look at the vehicles passing by before crossing the road. You get hit by the car. You file a suit against the car person for being negligent on the road. Will your claim succeed? No. Why?

It is the duty of the pedestrian, to wait for the space in order to cross the road. We were taught in school, to look both sides properly before we cross the road. Why? So that we could cross the road without any accidents.

Therefore, in this case, you have contributed to your own harm by not being diligent while crossing the road.

How are the damages awarded in Contributory Negligence?

Unlike the rest, where one party is supposed to pay damages to the other, in Contributory Negligence the party which has caused greater injury pays the damages. The total quantum of damages is offset by the injury that the party has suffered themselves.

How to claim this defence?

In order to claim this defence, two essentials must be proved:

1) Plaintiff did not take due care and

2) Lack of care resulted in accident.

Plaintiff did not take due care:

Negligence under Law of Torts means failure of owing due care on part of the defendant. In Contributory Negligence, the plaintiff does not necessarily owe a duty of care to anybody. In order to claim this defence what has to be proved is that the **plaintiff did not exercise due care for his/her own safety, which contributed to the injury.**

In the above example, the plaintiff did not exercise due care for his/her safety by not looking at the flow of vehicles while crossing the road. Therefore, he may have to pay damages for Contributory Negligence.

Lack of care resulted in accident:

It is not only important to prove that the plaintiff has failed to take proper care but also it is important to prove that this lack of care of the plaintiff resulted in the injury.

In the above example, if the plaintiff would have been diligent while crossing the road, the accident might not have taken place. Due to the action of the plaintiff being otherwise, the damage was caused to him.

Therefore, in a nutshell:

Plaintiff's lack of care → Lack of care causing accident = Contributory Negligence.

The burden to proof to claim this defence will lie on the defendant. Ergo, the defendant will have to show that the plaintiff had contributed to his own injury.

Last Opportunity Rule

Eventually with the claiming of this defence by the defendant, the plaintiff was seen to be at a disadvantage. What has been seen is that due to the slight Negligence on the part of the plaintiff, he may lose his case irrespective of the Negligence on the part of the defendant being the total cause of the accident.

Therefore, in order to not let this happen, the courts have formulated the “last opportunity rule”. This means that when two persons are negligent, then the person who had the last opportunity to avoid the injury will be liable for the loss, if he fails to avoid the injury.

Therefore, if the defendant had the last opportunity to avoid the accident then he will be held completely liable for the loss. The same will apply to the plaintiff as well.

To understand this, let us consider the following examples:

1. The plaintiff fettered the fore-feet of his donkey and left it on a narrow highway. The defendant coming from the other side was driving his care so rashly that he hit the donkey and killed it. In this case, though both the parties were at fault, the defendant if could have driven the car properly could have averted the accident. Therefore the defendant is held liable to pay for the loss.

1. In a very dark road, an old lady was walking in the wrong direction of the road. The defendant was driving rashly without his head lights on. Due to this he hit the old lady and caused serious injury to her. In this case, though both the parties were at fault, the defendant if could have had his head lights on and drove the car with proper care could have averted the accident. Therefore the defendant is held liable to pay for the loss.

Contributory Negligence and Children:

Children below six years are taken as an exception to Contributory Negligence. It is understood that children below six years of age are not in a position to understand the consequences of the act like the others.

To understand this let us consider the following example:

A child below 6 years was standing on the road near the footpath. A lorry which drove rashly hit him and injured him. In this case the court held that, the child was not in a nature like the adults to understand the consequences of standing on the road. Therefore, the child cannot be held

liable for Contributory Negligence.

How is Contributory Negligence different from Volenti non fit injuria?

The differences between both the defences which are laid on the basic principle of Negligence are as follows:

Contributory Negligence	Volenti non fit Injuria
Both the plaintiff and the defendant are negligent	Only the defendant is negligent (if at all)
Negligence is a partial defence	Negligence is a complete defence

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