



CLAT 2024
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THE LEGAL EAGLE



LEGAL REASONING

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Legal Reasoning 4

The Delhi High Court has ordered release of compensation of over Rs 18 Lakh in favour of the kin of a man, who died as a result of the injuries suffered due to falling of a signboard on his head in 2011.

The division bench of Justice Rajiv Shakdher and Justice Tara Vitasta Ganju in the ruling considered the question regarding applicability of the defence of vis major or act of God and principle of *res ipsa loquitur*.

The court said the defence of act of God to ward off strict liability would not be available to the bank "since the hazard presented by a signboard coming off the facade of the building was a foreseeable event given the fact that Delhi experiences high-velocity winds, in May, each year".

Background: On May 22 in 2011, the victim was walking on foot towards a tailor's shop when Bank of Baroda's signboard fell down on his head. He had to undergo a brain surgery at AIIMS and was discharged after 38 days in June 2011. However, his agony continued and he had to be admitted to hospitals nearly 10 times after that. In 2013, he filed a petition for compensation. He died during the pendency of the proceedings on February 21 this year. Bank of Baroda in response to his petition had taken a defence that since on the fateful day the national capital had witnessed high-velocity winds, the injuries caused to the victim and his subsequent death was an act of God, and therefore it cannot be held liable.

The court said that in cases of persons using public pathways and passages, the law presumes that the owners of structures and buildings which abut such pathways, highways or roads have a duty of care to the passer-by to periodically inspect and maintain such structures. "Therefore, objects which form part of the structure or are fastened to such a structure or building, if not periodically inspected or maintained, cause an injury to a passer-by by coming off the façade of the building, would result in the defendant and/or his agents being held liable under the tort of negligence," it added. The division bench said there is no doubt Bank of Baroda was guilty of the tort of negligence as there has been no averment that the bank had entered into a maintenance or supervision contract with the company which put up the sign board.

The 'act of God' defence is based on the tort law principle that liability must be founded on a fault and that a person cannot be penalized where the fault is that of a 'vis major' where all precautions were taken, and a casualty still occurred. Vis major is defined, as a loss that results immediately from a natural cause without the intervention of man, and could not have been prevented by the exercise of prudence, diligence, and care.

Source: Extracted (with edits and revisions) An excerpt from article titled "Falling Of Signboard A Foreseeable Event Given Delhi's Geographical Location, Defence Of Act Of God Can't Be Sustained: High Court", published at 'LiveLaw'.

1. Vidhan has a number of artificial lakes on his land. He had built these lakes on the advice of his astrologer, as he is a 'Pisces' and water bodies keep him calm. However, extraordinary rains such as this had never been witnessed in living memory; occurred which caused the banks of the lakes to burst and the escaping water carried away part construction of Vidhi's house. Decide.

- (a) Vidhan is liable for negligence as building artificial lakes is not necessary for enjoyment of his land.
- (b) Vidhan will not get the defence of Act of God as it was artificial lakes and not natural lakes that had flooded.
- (c) Vidhan will get the defence of act of god as it was due to unprecedented rains that water escaped.
- (d) Vidhan will get the defence of act of god as Vidhi did not take any precautions to prevent her premises from flooding.

2. Suppose, in the above facts, Vidhan had been informed through news circulated in his area that there are going to be unprecedented rains in the upcoming days and Vidhan could have built a drainage system for his lakes to prevent flooding Vidhi's premises. However Vidhan thought that since rains are not man made, he need not do any extra measures to avoid the effect of the same. Decide.

- (a) Vidhan will be liable as he did not take precautions to avoid the effect of the rains.
- (b) Vidhan cannot be held liable for an act of God.
- (c) Vidhan will get the defence of act of God.
- (d) Both (b) and (c)

3. Vidman had a warehouse in a dilapidated condition which collapsed during an earthquake and injured bystanders. Vidman claims an act of God caused the building to fall. Vidman had taken insurance for the warehouse and wants to claim the same. However, the insurers deny the claim. Decide.

- (a) It was earthquake which is an act of god that caused the warehouse to collapse, therefore insurers cannot deny the claim.
- (b) Since the warehouse belonged to Vidman, he should have used better material in making it earth quake proof.
- (c) Vidman did not take reasonable care to maintain the structural integrity of the building and cannot claim act of god.
- (d) Both (b) and (c)

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4. Vidhi had booked goods with Vidhan. Vidhan used Vigman's courier services for transportation. The goods were destroyed due to bad packaging. The goods were perishable and arrived rotten at Vidhi's doorstep. Decide.

- (a) Vidhan cannot claim act of god as it was due to poor packaging that the goods perished.
- (b) Vidhan can claim act of god as goods were perishable and perished in their natural span.
- (c) Vidhi can sue Vidhan for criminal negligence.
- (d) Vidhan exercised all precautions and therefore can claim act of god.

5. Vidhushree is a makeup artist and has accepted bookings till the month of September 2022. However, her city is hit by the COVID pandemic and the lockdown has been announced. Vidhushree's client Vidamra requests that Vidhushree may use all precautions for safety and must fulfil her contract for Vidamra's makeup. Vidhushree fails to perform the contract and claims Act of God clause mentioned in their contract. Decide.

- (a) A disease cannot be said to be an act of god and therefore Vidhushree cannot claim the same.
- (b) Lockdowns are man-made and not imposed by God, therefore Vidhushree cannot claim Act of God.
- (c) Vidhushree can claim Act of God as pandemic is a natural cause without the intervention of man, and could not have been prevented by the exercise of prudence, diligence, and care.
- (d) Vidhushree can claim Act of God as she did not cause the pandemic.

1. Ans. c

Sol. Vidhan can take the defence of act of god as the facts mention that it was due to unprecedented rains that the water escaped. Therefore option (c) is the correct answer. Options (a) and (b) have no logical nexus and must be rejected. Option (d) is incorrect as defence of act of god will be given to Vidhan and not Vidhi, as water had escaped from his premises.

2. Ans. a

The correct answer is option (a) as the passage mentions that precautions must be taken in order to avail the benefit of the doctrine of act of God, the same can be inferred from the lines "The 'act of God' defence is based on the tort law principle that liability must be founded on a fault and that a person cannot be penalized where the fault is that of a 'vis major' where all precautions were taken" Since Vidhan did not take all precautions, he cannot claim act of God. Therefore options (d), (b) and (c) are incorrect.

3. Ans. c

Sol. The correct answer is option (c) as the facts mention that the warehouse was already in a "dilapidated" condition that is old or broken. Therefore the building was not maintained and reasonable precautions to avoid collapse was not done on Vidman's part and therefore he cannot claim act of god. Therefore option (a) is incorrect. Option (b) is a generalised statement and must be rejected. Therefore option (d) is incorrect.

4. Ans. a

Sol. The facts clearly mention that it was due to poor packaging that the goods perished and therefore Vidhan cannot claim act of god. Therefore option (b) is incorrect. Option (c) is outside the scope of the passage. Option (d) is incorrect as Vidhan did not exercise all precaution as goods were poorly packed.

5. Ans. c

Sol. The correct answer is option (c) as the passage mentions "The 'act of God' defence is based on the tort law principle that liability must be founded on a fault and that a person cannot be penalized where the fault is that of a 'vis major' where all precautions were taken, and a casualty still occurred. Vis major is defined, as a loss that results immediately from a natural cause without the intervention of man, and could not have been prevented by the exercise of prudence, diligence, and care." Therefore options (a) and (b) are incorrect. Option (d) is not logically sound and must be rejected.