
VOLENTI NON-FIT INJURIA: DAMAGE SUFFERED BY CONSENT IS NOT A CAUSE OF ACTION

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History/ Origin

The term “**Volenti Non-Fit Injuria**” is originally read as “Nullainiuriaest, quæ in volentem fiat” formulated by Roman jurist named Ulpian¹. It is a maxim of Latin origin in the context of language. This maxim is a full defence for the motion of the defendant whose consent has been received from the plaintiff, and the plaintiff agrees to suffer the damage caused to him by that act.

Before 1945 there was no precise distinction between Volenti Non fit Injuria and Contributory Negligence. In pre-1945 to take defence, it became important to prove breach of duty. The judges were having a perplexing view regarding contributory negligence and volenti non fit injuria. Some were of the view that for the defence to function it is essential that there ought to be specific or implied consent between the parties for the defence to perform while the opposite felt that if there is any pre-existing chance and the plaintiff knew and had consented to that then there will no defence available.

Meaning and Definition

The meaning of this maxim is “willingness does not make injury” or where there is consent, there is no injury. In other words, when a person consented to do something or has given permission to another person to do certain thing, and if he is injured because of that, he cannot claim damages.

In case law of **Hall v. Brooklands Auto Racing Club**² The fact of the case is that the plaintiff was a spectator at a motor automobile racing being held at Brooklands on a track owned by the defendant company. During the race, there was a collision among automobiles, which resulted in one of the car turned into and thrown to of the spectators, thereby injuring the plaintiff. It

¹*Chatteron v. Gerson [1981] Q.B. 432*

² [(1932) All E.R. Rep. 208; (1932) 1 K.B. 205]

changed into held that the plaintiff impliedly to suffer the damage and consequently the defendant was not liable for the injury.

Where is Volenti Non Fit Injuria applicable?

The doctrine of Volenti Non Fit Injuria is relevant for protecting the defendant where the plaintiff has voluntarily given consent for some act to be carried out however because of the loss he suffered after the act is performed raise question, in such conditions this doctrine can be used. Like as an instance in which a spectator buys a price tag for watching automobile racing in a membership, in which he become hit through a vehicle because of the collusion among the two racing vehicles, in that scenario he can't claim any compensation from the club for the damage suffered. This doctrine is even relevant within the scientific cases, wherein the patient offers consent for the surgical treatment to be executed, if because of any reason however not the mistake through a health practitioner if the operation doesn't get successful then in that state of affairs the affected person cannot claim damages.

To understand, let's take help of a case law. In **Lakshmi Rajan v. Malar Hospital Ltd**³ The complainant was a married woman aged about 40 years. She observed development of a painful lump in her breast. Even though, the lump had no effect on her uterus, during the surgical operation, her uterus was removed without any justification. It became held that the hospital was liable for deficiency in the services provided. The court held that the affected person's consent for the operation did no longer mean her consent to the removal of her uterus.

Elements of Volenti Non Fit Injuria

For the application of the defence of Volenti Non Fit Injuria, there are some essential factors or conditions which should be present in a case and only when these are fulfilled, the defence can be taken to prevent liability. The following are two essential elements:

- i. The plaintiff has the information of the risk
- ii. The plaintiff with the knowledge of risk has voluntarily agreed to suffer the harm.

Thus, each time the plaintiff is conscious of the opportunity of damage which is in all likelihood to be brought on by way of an act and when he nevertheless accepts to do that act and consequently has the same opinion to go through the injury, a defendant is relieved of his

³ III (1998) CPJ 586 (Tamil Nadu SCDRC)

liability.

Key Principles for application of doctrine Volenti Non Fit Injuria

The following are the conditions for application of the doctrine of Volenti Non Fit Injuria

1. **Consent must be free:** The consent ought to be free and implied, and no longer received through coercion, undue impact or misrepresentation. The petitioner ought to be absolutely privy to the potential dangers before performing the act.
2. **Consent should not be obtained by fraud:** In cases where consent has been obtained by means of fraud, this defence is outrightly denied. The defendant shall be held responsible for the tort devoted and could pay the damages to the defendant. Consent obtained by fraud is considered to be void ab initio.
3. **Mere knowledge do not imply assent:** Volenti Non Fit Injuria is only applicable when both the conditions, a) prior knowledge of the risk, and b) agreeing to the risk voluntarily, are fulfilled. As the title explains itself, mere knowledge does not imply assent.

This maxim is not scienti no fit injuria i.e., knowledge implies consent but Volenti Non Fit Injuria i.e. mere knowledge does not imply consent to take the risk. In case law of **Dann vs. Hamilton**⁴ The plaintiff selected to travel by using a automobile no matter knowing approximately the driving force's drunken state. The driver turned into driving negligently which led to an accident. The plaintiff then sued the personal representatives of the motive force. They pleaded the defence underneath this maxim. The Judge expressed doubt whether or not the maxim should ever observe after the act is performed as because if the consent is acquired from the claimant before the act of negligence is finished then the claimant could no longer be capable of have the know-how of the act and till what extent he might be susceptible to suffer the damage.

4. **Negligence of the defendant:** The defence of Volenti Non-Fit Injuria is not applicable in a case where the defendant has been negligent. Therefore, best wherein there's no negligence through the defendant, he can declare this defence to escape liability.

Limitation on the application of the doctrine Volenti Non Fit injuria

1. **Rescue cases:** Whilst the plaintiff suffers a damage as a result of him doing an act which he knows is probable to cause harm to him but it's far an act to rescue someone, then

⁴ Cf. *Canterbury v. Spence*(1972) 464 F. 2d 772.

this defence will no longer follow and the defendant may be held dependable.

2. **Illegal Acts:** If the consent is given for an act which isn't always allowed with the aid of law, then, even at the fulfilment of all of the critical situations of this defence, the legal responsibility can't be escaped and hence in such instances, this defence becomes inoperative.

Contributory Negligence & Volenti Non Fit injuria

Both contributory negligence and Volenti Non Fit Injuria are used as a defence by the defendant to escape legal responsibility however they differ from each other.

In contributory negligence, the plaintiff who has suffered a damage is likewise at fault in conjunction with the defendant and therefore the quantum of damages which he can be awarded is reduced in percentage to the degree of his negligence inside the act which brought about him damage. For that reason, each the parties are at fault in one of these cases and consequently this is a partial defence available to the defendant.

Recent case laws on Volenti Non Fit Injuria

In case law of **Ekta Kapoor v STATE OF M.P.**⁵ the petition was disregarded below the identical protection. The issue turned into concerning the content material of a web series on the OTT platform Alt Balaji, wherein a certain amount of beside the point and obscene acts had been depicted.

After hearing arguments from both the counsels, the decision changed into held within the favour of the platform as the acquisition of the subscription itself by means of the viewer is of the same opinion to the consumption of such type of content material.

In case law of **Urmila Devi v Mcd & Ors**⁶ Inside the above case, a bunch of petitions were filed towards the Municipal enterprise Delhi while numerous deaths passed off because of drowning of the victims in a dirty sewer. It resulted due to adjoining slippery grounds. A guy even as rescuing a child drowned in sewer and succumbed to dying. The spouse of whom claimed damages from the respondent.

The defendant was held accountable inside the decision held through the courtroom as it

⁵ 2020

⁶ 2016

changed into its responsibility to ensure upkeep of the sewer and the land round it. The maxim of Volenti Non Fit Injuria doesn't practice because it was a case of rescue even whilst the plaintiff turned into aware about the risks and gave consent for the injury.

The harm occurred because of the respondent's negligence.

Conclusion of the doctrine of Volenti Non Fit Injuria

The Doctrine Volenti Non Fit Injuria is one of the excellent defence available under the regulation of torts wherein the person that has committed a wrong is exempted from legal responsibility because the victim of such an improper offers his consent to the fee of such an act and the sort of consent ought to be free for the successful application of this defence in a case.

This defence is also subject to exception and limitations like rescue cases and the negligence of the defendant in which even if the consent is given by the plaintiff, the defendant is held liable. Accordingly, while using/ approving this defence, Courts have to make sure that the situations of this defence are fulfilled and it doesn't fall under the limitations imposed under the doctrine.