

Liability For Sports Injuries & Duties of Athletics Personnel

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Abstract

When it comes to sports, any injuries to the players cannot be ignored as it involves serious legal as well as medical issues. Injuries suffered by an athlete can be ignored in case of minor injuries but cannot be ignored when the injury is due to the negligence of the superior, who is responsible to keep and safeguard the health of an athlete. In mathematical terms, if the casualty and the duty intersect with each other, then the liability occurs and hence, the liability shall be of a person who is responsible to perform a particular duty and has failed to do so. In this article, we are going to touch upon various aspects speaking about the duties of the athletics personnel who are responsible for the players' health and safety and also the incidents when they are not liable. Further, we shall also have a glance at the pattern adopted by the court of law in the determination of liability followed by the defences adopted by the sports organizations to avoid falling prey to the accusations.

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Introduction

90 percent of the 3.5 million young athletes who are injured each year are injured as a result of sports-related activities. This raises high probable chances of getting to the fact that involvement in sports means attracting injury. However, there are different levels of risk factors, and the chances of getting injured also vary differently in different sports. For example, in contact sports like rugby, injuries are always present and are unavoidable while in other sports like cricket, tennis, etc the chances of getting injured are less. Prevention of these injuries should be the prior obligation of the stakeholders in sports including players as well as athletic persons. Athletics personnel is those who are responsible for planning, supervision, and instructions, providing a safe environment and safe pieces of equipment to play, evaluating injuries, and taking responsibility for their actions. However, unfortunately, there are so many incidents happening around us that display injuries to athletes due to various factors and sometimes even due to the negligence of the person responsible to prevent these injuries.

Types Of Injuries

It is pertinent to note that injuries in sports are inherent and even there is a high probability of causing serious injuries to the players. These injuries may range from damage to the physical parts of the body including pulled hamstring, knee injury, elbow injury, shoulder injury, fractures, etc and these types of injuries often occur due to overactivity or accidental collision with the other players. These injuries are predictable in sports but what is unpredictable are the injuries that occur due to the wearing of defective sports equipment and protective gear. The players can always sue the company which manufactured that particular equipment that contributed to causing the injury. In some situations, sporting equipment must also include a warning label that includes instructions on how to use the equipment and a list of any known hazards. If a warning label is not included when it is required, the maker may be held accountable for failure to warn if any injuries occur as a result of abuse. In some cases, sports² equipment must also come with a warning label that provides instruction concerning how the equipment should be used, and advise of any known risks. If the manufacturer fails to include a warning

² John P. Dearie, *When Does Liability Attach for a Sports Injury?*, The Dearie Law Firm P.C., 14th July 2021, <https://www.dearielaw.com/news-insights/personal-injury/when-does-liability-attach-for-a-sports-injury/#:~:text=If%20someone%20else%20was%20responsible%20for%20causing%20your,to%20compensation%20by%20filing%20a%20personal%20injury%20action.>

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label when necessary, they may be held liable for failure to warn if any injuries occur due to misuse.

Measuring The Scale Of An Injury

Measuring the scale of injury is a very crucial task because the severity of injury must be known by the injured player as well as his/her coach, trainer, physio, and other athletic personnel to determine the capacity of the player to be involved in future endeavors.

One of the heavy criticisms of the grading system of the scale of injuries suffered by the players is that to measure the symptoms of injury, reliance is based on the averments and inputs of the players themselves, which is a wrong strategy as players often underreport the symptoms and their problems as they fear that their game might be halted for a longer duration depending upon the level of injury. There have been even situations wherein even parents of the young players put pressure upon the coaches and medical attendants to display their child as fit to play so that there is no pause upon their career and current form.

Not only this but modern athletic trainers do not specifically follow guidelines either because they think that player is fit to go or the player might himself be eager to go in to play despite having injuries as he/she may be a prime player in that match. According to a recent study, nearly one-third of football players who suffered a concussion were only held out of play for 14 minutes, even though grading scales generally recommend that an athlete who has sustained a minor head injury remain on the sidelines for at least 20 minutes before being evaluated for return to play. It could be claimed that, given the current state of scientific knowledge, this action is irrational.

A recent study indicated³ that almost one-third of football players who experienced concussion were held out of play for only 14 minutes, although the grading scales generally recommend that an athlete who has suffered a minor head injury remain on the sidelines for at least 20 minutes after the injury before an evaluation is made about a return to play. It could be argued that, based on the scientific knowledge available, this behaviour is certainly not reasonable.

Liability Of Injuries In Sports

It is a widely accepted norm that sports involve the risk of causing harm and injuries. As a general rule, there is a duty of care towards others and when this duty is breached, the injured person is entitled to sue the defaulter. A sportsperson when suffers an injury, has every right to claim

³ Osborne, B. (2001). *Principles of Liability for Athletic Trainers: Managing Sport-Related Concussion*, Journal of Athletic Training, 36(3), 316-321. <https://doi.org/https://www.ncbi.nlm.nih.gov/pmc/articles/PMC155425/>.

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compensation for it through medical claims and other similar ways and if the injury is due to the negligence of the other party, the player has a right to sue the other party be it his or her coach, trainer, physio, teammate or another rival player as there are high chances of getting injured when the nature of the game is aggressive. In modern sports, winning is the only goal of the athletes and the concept of sportsmanship has taken a backseat. Therefore, there are high chances of facing a violent situation at any stage in an ongoing match which may end up causing injury to others.

But when it comes to measuring the scale and depth of injury to determine the liability, there are many hurdles to determine the exact degree of the same as we have already seen above. However, the courts, while deciding such cases involving liability in sports injuries, consider the basic rule that sports always pose a serious threat to the players in every possible manner and the court tries to analyze if the duty of reasonable care is breached or not.

In *Caldwell vs Maguire*, the claimant was a professional jockey who sued the other jockeys in the tort of negligence. But the court of law held that the defendants are not liable. The intense, fast-paced character of the race, as well as the fact that the purpose is to compete for the best place, meant that the threshold required to demonstrate breach was high, and the defendant's behavior did not meet it.

The court relied upon its decision by considering the stressful, fast-paced nature of the race, and the fact that its object is to compete for the best place meant⁴ that the threshold required to establish breach was high, and was not met by the defendant's behaviour.

However, in the instance of *Leahy vs. School Board of Hernando County* (1984), a footballer was denied a helmet and mouth guard during so-called non-aggressive agility drills against other players who were wearing protective equipment due to a lack of equipment. During the game, Plaintiff sustained facial injuries, including smashed teeth. The school was judged accountable for failing to provide safety equipment to the players and for failing to warn other players to be cautious of those who were not wearing protective gear. Even in the face of foreseeable outcomes, the institution failed to fulfill its responsibility to exercise reasonable care.

However, on the other hand, in the case of Leahy vs School Board of Hernando Country (1984), due to lack of equipment, a footballer⁵ did not receive a helmet and mouth guard during the so-called

⁴ LawTeacher. November 2013. *Caldwell v. Maguire*. [online]. Available from: <https://www.lawteacher.net/cases/caldwell-v-maguire.php?vref=1> [Accessed 5 October 2022].

⁵ Athletic Edge, *Who's Liable for Youth Sports Injuries?*, <https://www.teamedgeathletics.com/blog/whos-liable-for-youth-sports-injuries.aspx>.

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non aggressive agility drills against the other players who were wearing the protective equipments. During the game, the Plaintiff suffered facial injuries and even his teeth were shattered. Here, the school was found liable for not providing the safety equipments to the players and not even cautioning other players to go slow on those who are without protective gears. The school failed to fulfil its duty to take reasonable care even during foreseeable consequences.

If we speak specifically about the course of action to be taken in the cases of litigation, it has to be analyzed first and foremost whether the risk is an inherent and an integral part of the activity. If the answer to this issue is positive then the magnitude of risk and actual knowledge of the nature of the risk is irrelevant. Secondly, there is a need to observe whether the existing inherent risk is increased by the actions of the defendant. If the defendant despite being able to minimize the risk, did not do so or it did not fulfill their duty of reasonable care, then the case may be referred to further trial.

As a general rule, the court of law always tries to focus its attention on one of the significant points of asking who had control over the match in which a particular player was injured. The court finds it also pertinent to note who had the rulemaking or amending powers along with its enforcement. Along with these factors, other causes, facts, and situations from different perspectives are analyzed before concluding the determination of the liability.

Duties Of The Athletics Personnel

Athletic personnel or Athlete Support Personnel means and includes any person employed by or working with an athlete or participating in the competition with him/her and can also include the coach, trainer, manager, representative, medical attendant, agent, or any associated official. This inclusive definition speaks for itself and may give us a glimpse of a rough idea as to what will be the duties of the Athletic support personnel towards an athlete.

While focusing on the duties, the general rule is that the athletics personnel are responsible to protect and promote the health and safety of the athlete. It is almost impossible to prevent the injuries caused by accidents but the operators must take every reasonable step which is needed to prevent foreseeable and avoidable danger. However, one shall also recognize that this is the basic duty of athletic support personnel but the extent and scope of it varies differently in different situations as all the sportspersons are not trained in the same conditions with the same facilities and playing environment. Hence, reasonable care to be taken by the trainer varies accordingly.

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Apart from these, other duties are to provide adequate instructions and guidance on the activity which includes explaining the basic rules of the game and even identifying the risks involved in it, supplying proper equipment to the players which are free from any defects, taking extra care while in training sessions because players tend to adopt the careless attitude and avoid to take precautions during training sessions and forcing the players to use excessive force or pushing them beyond the standard limit, which lends them ultimately get injured.

In a situation where suppose there is an injury to any player, the standard of care to be taken by the athletic personnel is determined by the prima facie situation and also by the expert testimony if required, and also upon the elements like national athletic training certification boards, standardized training programs, certification⁶ programs, and state licensing requirements. The licensed athletic trainer must exercise reasonable skill and understanding within the profession.

The basic duty, however, of athletic support personnel is that of duty to act reasonably in multiple situations. Every coach needs to carry with them the duty to plan things. If without any negligence or recklessness, the basic duties are fulfilled by the guides, coaches, and the organizations offering sports activity, they are deemed to be safe against any claims by the injured players until and unless their fault is proved beyond a reasonable doubt.

There is another relevant aspect that has to be focused on by the organizers and that is risk management. Risk management in simple terms is a process of management of risks that arise in sports in such a manner as to reduce their aggravation because risks cannot be rooted out from the activities in sports. While there are some events, for example, risks that arise because of disregard towards the rules laid down due to negligence by its subjects. However, the risk management referred to here has its boundaries in different situations like a local sports club that offers programs to the individuals directly and are involved in direct activities with the players would rather employ a narrow approach towards risk management and would consider themselves liable only towards the breach of managing risks that are within the outreach of their rules and bylaws as compared to the other sports organizations who are responsible to manage the risks of its activities and also for the activities carried out by its members or its employees including coaches.

Defences Undertaken By The Organisation / Athletic Personnel

⁶ Osborne B. *Principles of Liability for Athletic Trainers: Managing Sport-Related Concussion*. J Athl Train. 2001 Sep;36(3):316-321. PMID: 12937503; PMCID: PMC155425, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC155425/?mcsckid=1195d1fdce8511ecbdf24bbf0a054b82#B9>

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It can be realized that in the situations, where the player who has a minor injury, himself forces the athletic trainer or coach to allow him to play, the trainer or coach before granting such permission, shall perform his duty to disclose all the facts and information about the injury suffered by the player and the probabilities of the consequences that will be faced in case of a further injury at that time. Failure to provide this information will attract liability for negligence. This situation comes in the ambit of Informed Consent which is technically a defense to be taken against the liability of negligence. Informed consent comes from the principle of public policy where an adult has a right to decide what to do with his or her body.

However, this consent shall be coupled with knowledge about all the risks undertaken. These potential risks and all the material information shall be full disclosure to the player who would otherwise be reluctant to play if not informed about any material fact related to his or her injury.

Another defensive step which is most commonly relied upon by the organizers of the sports is that of a waiver which is being signed by the players wherein they accept the risk of injuries which are prone to that particular sport and even that may include a Death Waiver which can be categorized into the express assumption of risk. Many organizers of sports events have relied upon this strategy and have been absolved from any liability/is in many cases. After being engaged in a surfing accident that left him, quadriplegic, David Prast sued the council for negligence in the matter of *Prast v. Cottesloe Council*. He alleged that the Cottesloe Council failed to uphold its responsibility by failing to post warning signs about the dangers of bodysurfing. The Council did not breach its duty of care, according to the District Court, and his appeal was dismissed by the Supreme Court because the hazards were evident.

In the case of *Prast v. Cottesloe Council*, David Prast sued the council for negligence after being involved in a surfing accident that left him quadriplegic. He claimed that the Cottesloe Council breached a duty of care by not posting warning signs stating the dangers of bodysurfing. The District Court ruled that the Council did not breach⁷ its duty of care and the Supreme Court dismissed his appeal because the risks were obvious.

However, there have been cases wherein these types of waivers are overruled by the courts. In 2013, a teenage participant drowned while competing in a Tough Mudder tournament, notably when completing the 'walk the plank' obstacle, due to a delay in rescuing the said player, who was submerged for around 9 minutes. Though he was eventually rescued, he died as a result of

⁷ LawTeacher. November 2013. *Negligence and Duty of Care in Sports*. [online]. Available from: <https://www.lawteacher.net/free-law-essays/contract-law/negligence-and-duty-of-care-in-sports-contract-law-essay.php?vref=1> [Accessed 6 October 2022].

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his injuries. The participant's family filed a lawsuit alleging negligence and a lack of race monitoring by the organization. Tough Mudder relied on the participant's death waiver in this case, but the court overruled such agreements because they appeared to be excessively one-sided in favor of the event organizers.

One such case was in 2013 wherein while participating in a Tough Mudder competition, specifically while completing the 'walk the plank' obstacle, a young participant drowned as there was a delay in rescuing the said player who remained underwater for about 9 minutes. Though he was rescued later on and succumbed to injuries. The family of the participant filed a lawsuit based on negligence and lack of supervision⁸ of the race by the organization. Here, Tough Mudder depended on the death waiver signed by the participant but the court overruled the agreements as they seemed to be too one-sided in favour of the event hosting organizations.

Conclusion

All this while, the focus was only on the injuries that are caused while playing sports but another outlook towards it is the exhaustion faced by the body of an athlete due to rigorous training sessions and matches that are played in this competitive and aggressive phase of sports career of an athlete. Rafael Nadal, a professional tennis player, famously said, "It would be fantastic to see a less violent tennis existence for future generations." Not only because of what occurs during your career but also because of what occurs thereafter." Nadal is concerned that, because of the toll his body has taken, he may not be able to play leisure tennis once his career is over.

Rafael Nadal, a professional tennis player once stated that "For future generations, it would be good to see a less aggressive tennis life. Not only because of what happens to your career but because of what happens after your career." Nadal worries that because of the pounding his body has taken, once his career ends, he may not⁹ even be able to play recreational tennis.

Identifying the liability for sports-related injury is a very complex task as there is a thin line of distinction between the role and responsibility of the organizers and that of the sportspersons. While determining the liability and the level of injury, the court of law follows a basic formula of identifying whether the athletic trainer or the coach acted as a responsible and reasonable trainer in that particular situation or not. Apart from that, there is the idea of risk assumption,

⁸ Human Kinetics, *Liability & Sports Related Injury*, <https://us.humankinetics.com/blogs/excerpt/liability-and-sports-related-injury>.

⁹ Dr. Jack Singer, *Are Professional Sports Organizations Doing Enough to Protect Their Athletes?*, Psychologically Speaking with Dr. Jack Singer, <https://drjacksinger.com/are-professional-sports-organizations-doing-enough-to-protect-their-athletes/>.

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in which the question of whether the danger of harm was inherent to any given activity and whether the athlete assumed the risk of injury by participating in the sport is commonly raised. If a coach, trainer, or physician acts in a way that increases the dangers of participating in a sport, their actions may be used to establish potential culpability.

Apart from this, there is a concept of Assumption of risks wherein issues that arise frequently are whether the risk of injury was inherent to any particular sport and whether the athlete assumed the risk of injury by participating in the sport. If a coach, trainer, or physician acts in a way that increases risks inherent¹⁰ in playing a particular sport, their actions could serve as a basis for potential liability.

So, every sportsperson should be aware of the types of injury that one may encounter and also should know that any type of injury in sports can be harmful and can prove to be the one that may end the career of an athlete and therefore, by adopting a multi-disciplinary approach, every reasonable care and caution shall be undertaken by the trainer or coach as well as player for their safety and also the safety of fellow players. In addition to that players and their associations must ensure that they buy relevant sports injury insurance to minimize the players' liability while participating in sports.

Although preference is always given to Prevention because it's widely accepted that Prevention is better than cure, sportspeople come across sudden situations where it is almost impossible to prevent a particular injury and it is bound to happen. Therefore, the process of getting recovered i.e. cure also carries an equal amount of weightage. Here, there is a major role of physiotherapists, who need to strive for rehabilitation of the player, and most importantly player should have freedom of choosing the structure of the rehabilitation program to get involved and ensure effective treatment and thereby, a speedy recovery.

¹⁰ Quandt EF, Mitten MJ, Black JS. *Legal liability in covering athletic events*. Sports Health. 2009 Jan;1(1):84-90. doi:10.1177/1941738108327530. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3445119/?mscldid=072af11cd0d511ec8806097f30251778>