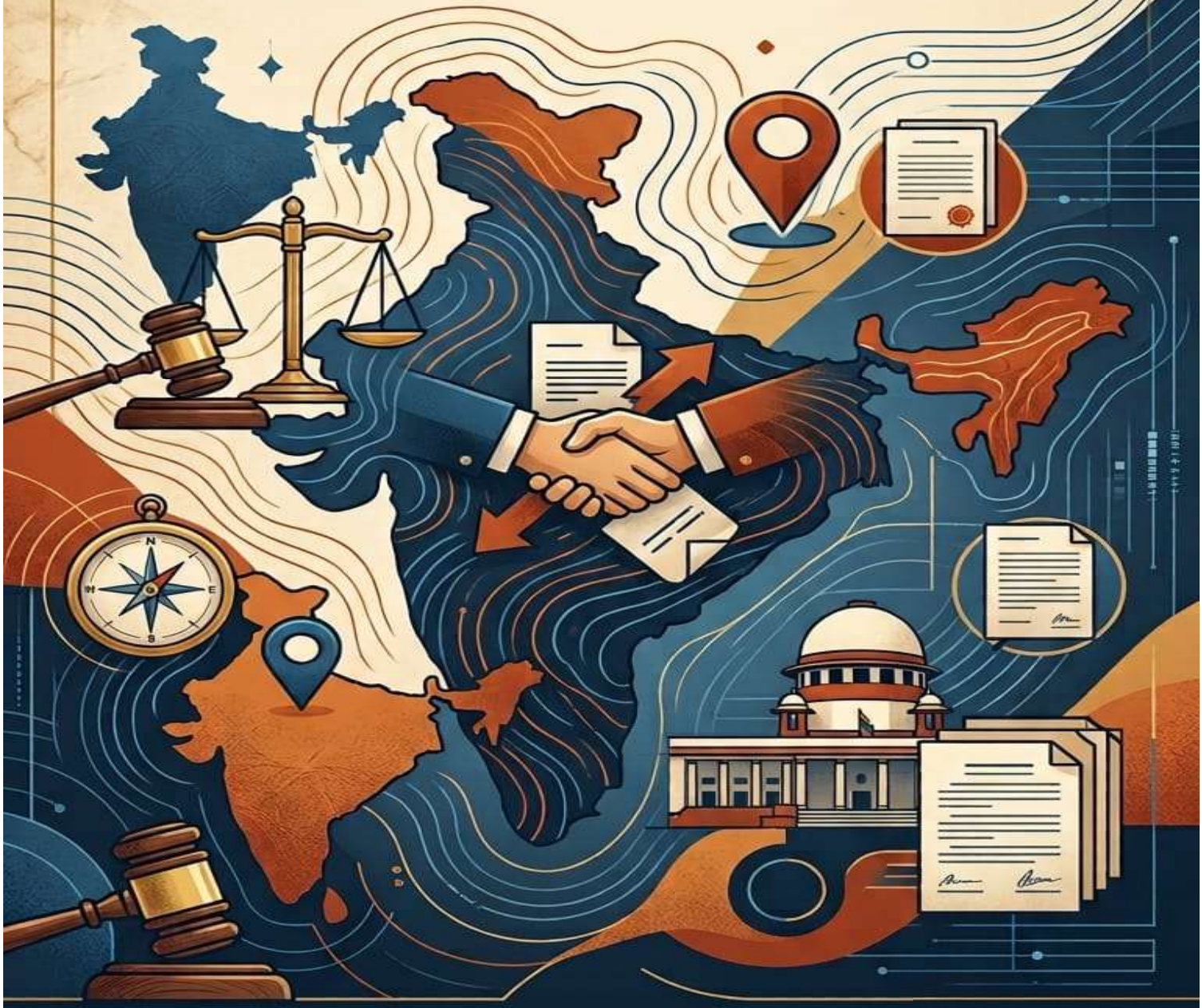
# CONTOURS *of* DAMAGES *and* CONTRACTUAL DISPUTES *in* INDIA



**EQUICORP ASSOCIATES LLP**
**ADVOCATES & SOLICITORS**
**C-98, 2nd Floor, East of Kailash, New Delhi-110065, India**
**www.equicorplegal.com**

## Preface

The Indian law of contractual damages is, at bottom, a law of compensation. Its governing purpose is not to punish the party in default but to place the party complaining of the breach, so far as money can do it, in the position it would have occupied had the contract been performed. That single idea—*restitutio in integrum*—organises an otherwise sprawling body of statute and precedent, and it travels unchanged from the civil court into the arbitral tribunal. This Law Compendium sets out the concept and the controlling authorities under Sections 73 to 75 of the Indian Contract Act, 1872, traces the long jurisprudential argument over liquidated damages and penalty, and explains how the same substantive measure is applied—and reviewed—within the framework of the Arbitration and Conciliation Act, 1996.

## Contents

## I. The Compensatory Premise

Damages are the primary remedy for breach of contract, and the premise on which they rest is settled and essentially modest. The law does not set out to strip the contract-breaker of gains or to mark its disapproval of the breach; it sets out to repair the injury that the breach has caused. The classical formulation is that of Parke B. in *Robinson v. Harman*: the party sustaining loss by a breach is to be placed, so far as money can do it, in the same situation, with respect to damages, as if the contract had been performed.[1] Indian law adopted that principle whole, and Section 73 of the Indian Contract Act, 1872 is its statutory expression.

From the compensatory premise everything else follows. Because the object is repair and not punishment, exemplary and punitive damages have no place in a pure contractual claim. Because the object is the injured party's actual position, the claimant must prove that a loss was in fact suffered and must establish its quantum with reasonable certainty. Because the law will not compensate a party for harm it could itself have prevented, the duty to mitigate qualifies recovery. And because liability cannot be unlimited, the loss must not be too remote—it must arise naturally from the breach or have been within the reasonable contemplation of the parties when they contracted.

These propositions are compactly housed in three sections. Section 73 fixes the entitlement to compensation and imports the twin tests of remoteness from *Hadley v. Baxendale*[2]. Section 74 governs the case where the contract itself names a sum payable on breach or stipulates a penalty, and confers on the court the power to award reasonable compensation not exceeding that sum. Section 75 preserves the right to compensation of a party who rightfully rescinds. The explanatory gloss the courts have laid upon these three provisions—and the manner in which arbitral tribunals apply them—forms the subject of this article. The decision-path that a claim in

[1]Indian Contract Act, 1872 (Act 9 of 1872), s. 73; the compensatory principle is classically stated in Robinson v. Harman, (1848) 1 Ex. 850, 855 (Parke B.).

[2]Hadley v. Baxendale, (1854) 9 Ex. 341 : 156 ER 145. The two-limb rule is reflected in the body of, and the illustrations to, s. 73 of the Act.

damages must traverse is mapped in Figure 1, which the reader may find a useful orientation to the discussion that follows.

**Figure 1 · The analytical path of a claim in damages, from breach to award.**

| **Breach of contract established** |
|---|
| Is the loss natural, or within the parties' contemplation? → If no: too remote and irrecoverable (s. 73). |
| Could the claimant reasonably have avoided the loss? → If yes: recovery is reduced for failure to mitigate. |
| Has the contract named a sum or stipulated a penalty? → If no: s. 73 — prove actual loss with reasonable certainty; award the loss proved. |
| Is some loss or legal injury shown to flow from the breach? → If no: no compensation.* |
| If yes: s. 74 — reasonable compensation, not exceeding the named sum (the ceiling). |
| **AWARD — compensatory damages plus interest (s. 34 CPC / s. 31(7), A&C Act). No punitive or exemplary damages in contract.** |

** Kailash Nath Associates v. DDA (2015) 4 SCC 136 — where no loss results, no compensation is payable though a sum be named.*

## II. The Statutory Architecture

The substantive law of damages lives in the Contract Act; the Arbitration Act supplies a forum and a discipline of finality, not a separate code of compensation. This is the single most important structural point in the subject, and it is worth stating plainly because much confused argument proceeds from forgetting it. When a dispute is referred to arbitration, the tribunal does not acquire a wider or narrower power to

award damages than a civil court would have. Section 28(3) of the Arbitration and Conciliation Act, 1996 requires the tribunal to decide in accordance with the terms of the contract and the trade usages applicable to the transaction; the measure of damages it applies remains that of Sections 73 to 75.[3]

What the Arbitration Act adds is procedural and remedial colour at the edges—most significantly the power under Section 31(7) to award pre-award and post-award interest, and the regime of finality under Sections 34 and 37 by which the award is insulated from review on the merits. The relationship is best seen as one of substance and procedure running in parallel rather than in competition, as Figure 2 illustrates.

**Figure 2 · Substance (Contract Act) and procedure (Arbitration Act) in parallel.**

| INDIAN CONTRACT ACT, 1872 | ARBITRATION & CONCILIATION ACT, 1996 |
|---|---|
| Section 73 — Compensation for loss naturally arising, or within the parties' contemplation; remote loss excluded; mitigation read in | Section 28(3) — Tribunal decides per the terms of the contract and trade usages; the substantive law of damages is preserved |
| Section 74 — Where a sum is named or a penalty stipulated: reasonable compensation, not exceeding the named sum | Section 31(7) — Power to award pre-award and post-award interest on the sum awarded |
| Section 75 — Compensation to a party who rightfully rescinds the contract | Sections 34 & 37 — Supervisory review only (patent illegality / public policy); no appeal on the merits |

[3]Arbitration and Conciliation Act, 1996 (Act 26 of 1996), ss. 28(3) and 31(7); on the supervisory character of review, see ss. 34 and 37.

| Sections 73–75 supply the substantive measure of damages in both fora. | The Arbitration Act furnishes the procedure and the finality — not an independent code of compensation. |
|---|---|

*restitutio in integrum — to place the injured party, so far as money can, in the position of due performance.*

## III. The Measure and Object of Damages (Section 73)

The first body of authority establishes what damages are for and how they are measured. The governing object is restitution of the expectation interest—the benefit of the bargain—qualified by the requirements that the loss be real, proximate and capable of proof. In *Murlidhar Chiranjilal v. Harishchandra Dwarkadas* the Supreme Court distilled two principles from the section: first, that the injured party is to be placed, in money terms, in as good a position as if the contract had been performed; and secondly, that he must take all reasonable steps to mitigate, and cannot recover for a loss he could have avoided.[4] Applied to a contract for the sale of goods, those principles yield the settled market-rate rule—on non-delivery, the measure is the difference between the contract price and the market price at the place and date fixed for delivery.

The market-rate rule is not a mechanical tariff but an application of the compensatory idea: it presumes that the buyer can go into the market and buy substitute goods, so that the difference in price is the true measure of his loss. Where the assumption does not hold—because there is no available market, or because the parties contemplated a particular sub-sale—the measure adjusts accordingly, subject always to the limits of remoteness.

[4]Murlidhar Chiranjilal v. Harishchandra Dwarkadas, AIR 1962 SC 366 : (1962) 1 SCR 653.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *Robinson v. Harman* (1848) 1 Ex. 850 : 154 ER 363 | Ct. of Exchequer, 1848 | The party sustaining loss by breach is to be placed, so far as money can do it, in the same position as if the contract had been performed—the foundational statement of the compensatory (restitutio in integrum) principle adopted by Indian courts. |
| *Hadley v. Baxendale* (1854) 9 Ex. 341 : 156 ER 145 | Ct. of Exchequer, 1854 | Recoverable loss is confined to that which (i) arises naturally, in the usual course of things, from the breach, or (ii) was reasonably in the contemplation of both parties, at the time of contracting, as the probable result of breach. The two-limb test stands codified in Section 73. |
| *Pannalal Jankidas v. Mohanlal* AIR 1951 SC 144 : 1950 SCR 979 | Supreme Court, 1950 | Damages are assessed on the natural and probable consequence of the breach; an agent who fails to insure goods as instructed answers for the foreseeable loss |

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | occasioned by that default, subject to apportionment for intervening causes. |
| *Murlidhar Chiranjilal v. Harishchandra Dwarkadas* AIR 1962 SC 366 : (1962) 1 SCR 653 | Supreme Court, 1962 | Two principles govern: the aggrieved party is to be placed, in money terms, as if the contract had been performed; and he must mitigate, and cannot recover avoidable loss. On non-delivery of goods, damages are the difference between contract price and market price at the place and date fixed for delivery. |

**RATIO DECIDENDI · Murlidhar Chiranjilal v. Harishchandra Dwarkadas**

Two principles lie at the root of the assessment of damages. First, the injured party is, so far as money can do it, to be placed in the same position as if the contract had been performed—compensation, never punishment, is the measure. Secondly, the duty to mitigate qualifies the first: the claimant cannot recover for a loss he could reasonably have avoided. Applied to a sale of goods, these yield the settled market-rate rule for non-delivery.

## IV. Remoteness and the Two Limbs of Hadley v. Baxendale

Section 73 expressly excludes "any remote and indirect loss or damage sustained by reason of the breach". The outer boundary of liability is therefore drawn not by causation alone but by foreseeability, and the controlling test is the two-limb rule of *Hadley v. Baxendale*, reproduced in substance in the body of the section. The first limb admits loss arising naturally, in the usual course of things, from the breach—general damages, presumed to be within the parties' contemplation. The second admits loss of a special or unusual character, but only where the special circumstances giving rise to it were communicated to, and so within the contemplation of, the party in default at the time of contracting. The distinction is set out in Figure 3.

**Figure 3 ·General damages (first limb) and special damages (second limb).**

| Recoverable loss on breach | measured under Section 73 of the Contract Act |
|---|---|
| **FIRST LIMB — GENERAL DAMAGES** | **SECOND LIMB — SPECIAL DAMAGES** |
| Loss arising naturally, in the usual course of things, from the breach; presumed to be within contemplation, with no special notice required. | Loss outside the ordinary course, recoverable only where the special circumstances were communicated and within contemplation at formation. |
| Test: would a reasonable person in the promisor's position foresee the loss as a 'not unlikely' result? (Victoria Laundry v. Newman, 1949) | Burden on the claimant to plead and prove notice of the special facts. (Karsandas Thacker v. Saran Engineering, AIR 1965 SC 1981) |
| **Unity in both limbs: REMOTENESS.** | **Loss too remote or indirect is irrecoverable; the contemplation principle fixes the limit of liability in court and tribunal.** |

The English refinements have been received without difficulty. *Victoria Laundry v. Newman* confined recovery to loss reasonably foreseeable at the time of contracting, and *The Heron II* recast the standard as loss that was "not unlikely" to result—a materially higher degree of probability than mere foreseeability in tort.[5] The Indian application is faithful to this calibration. In *Karsandas H. Thacker v. Saran Engineering* the Supreme Court held that a loss flowing from a sub-contract of which the defaulting party had no notice was too remote, and the buyer could not recover special losses he had not communicated at the time of contracting.[6]

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd.* [1949] 2 KB 528 | Ct. of Appeal (Eng.), 1949 | Recoverable loss is that which, at the time of contracting, was reasonably foreseeable as liable to result from the breach; loss of an exceptional character is recoverable only where the special circumstances were known to the party in default. |
| *Koufos v. C. Czarnikow Ltd. (The Heron II)* [1969] 1 AC 350 | House of Lords, 1967 | The contractual remoteness standard is stricter than the tortious: the loss must have been 'not unlikely' to result, i.e. a real danger or serious possibility within the parties' |

[5]Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd., [1949] 2 KB 528 (CA); refined in Koufos v. C. Czarnikow Ltd. (The Heron II), [1969] 1 AC 350 (HL).
[6]Karsandas H. Thacker v. Saran Engineering Co. Ltd., AIR 1965 SC 1981 : (1965) 3 SCR 254.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | contemplation. A leading gloss on the second limb. |
| *Karsandas H. Thacker v. Saran Engineering Co. Ltd.* AIR 1965 SC 1981 : (1965) 3 SCR 254 | Supreme Court, 1965 | Loss flowing from a sub-contract of which the defaulting party had no notice is too remote; damages are limited to what was within the contemplation of the parties, and a buyer cannot recover special losses not communicated at the time of contracting. |

## V. The Duty to Mitigate

Mitigation is the second great limiting principle, and it operates not as an independent duty sounding in damages but as a rule of assessment: the law simply declines to compensate the claimant for loss he could reasonably have avoided. The Explanation to Section 73 makes the point in terms—in estimating the loss, the means which existed of remedying the inconvenience caused by non-performance must be taken into account. The classic statement remains that of the House of Lords in *British Westinghouse*: the claimant must take reasonable steps to mitigate, and any benefit accruing to him out of steps taken in consequence of the breach must be brought into account in reduction of damages.[7]

[7]British Westinghouse Electric & Mfg. Co. v. Underground Electric Railways Co. of London Ltd., [1912] AC 673 (HL).

Two qualifications are important in practice. First, the standard is one of reasonableness judged on the facts as they stood, not with the wisdom of hindsight; a claimant who acts reasonably does not forfeit recovery merely because a different course would, as it turned out, have produced a better result. Secondly, the burden lies on the party in breach to plead and prove the failure to mitigate; it is no part of the claimant's case to establish, affirmatively, that it mitigated. In *M. Lachia Setty & Sons v. Coffee Board* the Court applied these principles to a defaulting purchaser's repudiation, holding that the seller acting reasonably might resell and recover the deficiency, the reasonableness of his conduct being judged on the facts and not with hindsight.[8]

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *British Westinghouse Electric & Mfg. Co. v. Underground Electric Railways Co.* [1912] AC 673 | House of Lords, 1912 | The claimant must take reasonable steps to mitigate; any benefit accruing out of steps taken in consequence of the breach must be brought into account in reduction of damages. The classic statement of the mitigation principle adopted in India. |
| *M. Lachia Setty & Sons Ltd. v. Coffee Board, Bangalore* (1980) 4 SCC 636 : AIR 1981 SC 162 | Supreme Court, 1980 | On a defaulting purchaser's repudiation the seller acting reasonably may resell and recover the deficiency; where the aggrieved party fails to take reasonable mitigating |

[8]M. Lachia Setty & Sons Ltd. v. Coffee Board, Bangalore, (1980) 4 SCC 636 : AIR 1981 SC 162.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | steps, damages are reduced accordingly. Reasonableness is judged on the facts, not with hindsight. |
| *Murlidhar Chiranjilal v. Harishchandra Dwarkadas* AIR 1962 SC 366 | Supreme Court, 1962 | Reaffirmed that the duty to mitigate is an integral qualification on the compensatory measure: avoidable loss is irrecoverable, and the market-rate rule itself presupposes the availability of mitigation in the market. |

## VI. Liquidated Damages, Penalty and Reasonable Compensation (Section 74)

Section 74 effected, for Indian purposes, a deliberate departure from the common law. English law drew—and to a degree still draws—a hard line between a genuine pre-estimate of damage, which is enforceable as agreed, and a penalty designed *in terrorem*, which is void. Section 74 abolishes that dichotomy: whether the sum is described as liquidated damages or as a penalty, and whether or not actual loss is proved, the party complaining of the breach is entitled to receive reasonable compensation not exceeding the amount so named. The named sum thus operates as a ceiling and a convenience, never as an automatic entitlement.

The persistent question across six decades has been whether, and when, proof of actual loss is a precondition to recovery. The line of authority is best read as a single sustained argument, mapped in Figure 4. *Fateh Chand v. Balkishan Das* laid the foundation: the statutory jurisdiction to award reasonable compensation cannot be contracted out of, and a forfeiture out of all proportion to the loss operates as a penalty.[9] *Maula Bux v. Union of India* added the evidential corollary—where it is possible to prove the actual loss, the claimant must prove it.[10] *ONGC v. Saw Pipes* supplied the qualification that has caused the most difficulty: where the contract names a genuine pre-estimate and the loss is by its nature difficult or impossible to prove, the named sum may be awarded as reasonable compensation without strict proof of the precise figure—though even then it remains a ceiling, not a windfall.[11]

The consolidating restatement is *Kailash Nath Associates v. Delhi Development Authority*, which should be the practitioner's point of departure. Compensation under Section 74 is payable only where a breach causes legal injury; the words "whether or not actual damage or loss is proved" dispense with proof of the precise amount where it is difficult to establish, but do not dispense with the requirement that some loss be shown to flow from the breach. Where no loss results, no compensation is recoverable notwithstanding the stipulation.[12] *Construction & Design Services v. DDA* softens the edge in the specific case where precise proof is genuinely difficult: there the court may presume that some loss has resulted and award reasonable compensation up to the stipulated sum, the onus then shifting to the defaulter to show that no loss occurred.[13] Most recently, *Welspun v. ONGC* confirmed that where time was not of the essence—extensions having been granted while liquidated damages continued to be levied—the strict recovery of the named sum is impermissible.[14]

[9]Fateh Chand v. Balkishan Das, AIR 1963 SC 1405 : (1964) 1 SCR 515.
[10]Maula Bux v. Union of India, (1969) 2 SCC 554 : AIR 1970 SC 1955.
[11]Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 : AIR 2003 SC 2629.
[12]Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136.
[13]Construction & Design Services v. Delhi Development Authority, (2015) 14 SCC 263.
[14]Welspun Specialty Solutions Ltd. v. Oil & Natural Gas Corporation Ltd., (2022) 2 SCC 382.

**Figure 4 · The trajectory of 'reasonable compensation' under Section 74.**

| | |
|---|---|
| **Fateh Chand (1963)** | Section 74 collapses the penalty / liquidated-damages divide; reasonable compensation cannot be contracted out. |
| **Maula Bux (1969)** | Where loss is provable, it must be proved; otherwise the stipulated clause operates as a penalty. |
| **Saw Pipes (2003)** | A genuine pre-estimate may be awarded where loss is difficult to prove — but the named sum remains the ceiling. |
| **Kailash Nath (2015)** | Definitive restatement: no loss, no compensation; the named sum is a ceiling only. |
| **Welspun (2021)** | Time not of the essence — a strict levy of the named sum is impermissible. |

*The constant thread: the stipulated sum is a ceiling and a convenience — never an automatic entitlement.*

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *Bhai Panna Singh v. Bhai Arjun Singh* AIR 1929 PC 179 | Privy Council, 1929 | The sum named operates only as the maximum recoverable; the claimant cannot recover beyond it and must prove the loss actually sustained. An early statement of the ceiling |

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | function, repeatedly approved in India. |
| *Fateh Chand v. Balkishan Das* AIR 1963 SC 1405 : (1964) 1 SCR 515 | Supreme Court, 1963 | Section 74 cuts across the penalty / liquidated-damages distinction; whatever the label, the court awards reasonable compensation not exceeding the named sum. The statutory jurisdiction cannot be contracted out of; forfeiture disproportionate to loss is a penalty. |
| *Maula Bux v. Union of India* (1969) 2 SCC 554 : AIR 1970 SC 1955 | Supreme Court, 1969 | Where it is possible to prove actual loss, the party claiming compensation must prove it; a clause permitting forfeiture of a deposit that is not a genuine pre-estimate is in the nature of a penalty, and recovery is confined to reasonable compensation. |
| *ONGC Ltd. v. Saw Pipes Ltd.* (2003) 5 SCC 705 : AIR 2003 SC 2629 | Supreme Court, 2003 | Where the contract names a genuine pre-estimate and the loss is difficult or impossible to prove, the named sum may |

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | be awarded as reasonable compensation without proof of the precise figure; where loss is provable, it must be proved. The named sum remains the ceiling. |
| *Kailash Nath Associates v. Delhi Development Authority* (2015) 4 SCC 136 | Supreme Court, 2015 | Definitive restatement: compensation under Section 74 is payable only where breach causes legal injury; where no loss is shown, no compensation is recoverable notwithstanding a stipulation. Reasonable compensation is the touchstone, the named sum the upper limit. |
| *Construction & Design Services v. Delhi Development Authority* (2015) 14 SCC 263 | Supreme Court, 2015 | Where the nature of the contract makes precise proof difficult, the court may presume some loss and award reasonable compensation up to the stipulated sum; the defaulting party bears the onus of showing that no loss was occasioned. |

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *Welspun Specialty Solutions Ltd. v. ONGC Ltd.* (2022) 2 SCC 382 | Supreme Court, 2021 | Where time was not of the essence—extensions granted while liquidated damages continued to be levied—strict recovery of the stipulated sum is impermissible; the principles of reasonable compensation apply, and the arbitral finding to that effect was unimpeachable. |
| *Wipro Ltd. v. Beckman Coulter International* 2006 SCC OnLine Del 743 : (2006) 131 DLT 681 | Delhi High Court, 2006 | Restated the tests distinguishing penalty from genuine pre-estimate: a stipulation extravagant and unconscionable compared with the greatest conceivable loss points to a penalty. Recovery is confined to reasonable compensation under Section 74. |
| *Indian Oil Corporation Ltd. v. Lloyds Steel Industries Ltd.* (2007) 144 DLT 659 | Delhi High Court, 2007 | Even under a liquidated-damages clause the claimant must lead evidence of loss actually sustained; absent proof of loss the court will decline the stipulated sum |

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | and confine relief to nominal damages. |

**RATIO DECIDENDI · Kailash Nath Associates v. Delhi Development Authority**

Section 74 will apply only where damage or loss is caused by a breach. The expression "whether or not actual damage or loss is proved to have been caused thereby" dispenses with proof of the precise amount of loss in cases where it is difficult to prove, but does not dispense with the requirement that some loss or injury be shown to flow from the breach. Where, on the facts, no loss results, the party in breach is liable to pay no compensation at all—the stipulated sum being the ceiling, and reasonable compensation the measure.

## VII. Forfeiture of Earnest Money and Security Deposits

A distinct but related line governs sums deposited as earnest. Genuine earnest money—paid as a guarantee of performance and good faith—may be forfeited on the depositor's default without proof of loss, and is conceptually distinct from a part-payment of price, which is not forfeitable as such. The distinction matters because a deposit that is in substance a part-payment, or a forfeiture clause disproportionate to any conceivable loss, is drawn back into the discipline of Section 74 and confined to reasonable compensation. *Shree Hanuman Cotton Mills v. Tata Aircraft* established the character of earnest as security; *Satish Batra v. Sudhir Rawal* confirmed that genuine earnest may be forfeited on the buyer's default without proof of actual loss, but that a

sum which is in truth a penalty attracts Section 74.[15] *Kailash Nath* adds the controlling qualification that earnest may be forfeited only where the breach is attributable to the party who paid it.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *Shree Hanuman Cotton Mills v. Tata Air Craft Ltd.* (1969) 3 SCC 522 : AIR 1970 SC 1986 | Supreme Court, 1969 | Earnest money is a deposit given as security for performance and as a guarantee of good faith; on the depositor's default it is liable to forfeiture, and it is distinct from a mere part-payment of price, which is not forfeitable as such. |
| *Satish Batra v. Sudhir Rawal* (2013) 1 SCC 345 | Supreme Court, 2013 | Genuine earnest money may be forfeited where the buyer defaults, without the seller proving actual loss; but where the sum forfeited is in truth a penalty rather than earnest, the forfeiture attracts Section 74 and is confined to reasonable compensation. |
| *Kailash Nath Associates v. Delhi Development Authority* (2015) 4 SCC 136 | Supreme Court, 2015 | Earnest money may be forfeited only where the breach is attributable to the |

[15]Shree Hanuman Cotton Mills v. Tata Air Craft Ltd., (1969) 3 SCC 522 : AIR 1970 SC 1986; Satish Batra v. Sudhir Rawal, (2013) 1 SCC 345.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | party who paid it; a forfeiture in the absence of any default by, or loss attributable to, that party cannot stand. |

## VIII. Loss of Profit and Quantification in Works Contracts

Construction and works contracts generate the largest and most technically demanding body of damages litigation, and the recurring head of claim is loss of profit on the unexecuted balance following wrongful termination, together with the under-recovery of head-office overhead. The courts have accepted that a reasonable percentage of profit on the value of the remaining work may be awarded, while insisting that the figure be supported by evidence rather than conjecture. *A.T. Brij Paul Singh v. State of Gujarat* and *Dwaraka Das v. State of M.P.* establish the entitlement: on wrongful repudiation of a works contract by the employer, the contractor recovers the profit he would have earned on the unexecuted portion, a reasonable percentage of the value of that work being allowed where direct proof is difficult.[16]

On method, *McDermott International v. Burn Standard* recognised the Hudson, Emden and Eichleay formulae as accepted means of computing loss of profit and head-office overhead on disrupted or terminated contracts, while making clear that the choice of formula and its application are matters of evidence within the province of the arbitral tribunal. The evidential discipline is supplied by *Kanchan Udyog v. United Spirits*: a claim to loss of profit must be established by cogent and reliable evidence, and speculative projections unsupported by material demonstrating that the profit would

[16]A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59 : AIR 1984 SC 1703; Dwaraka Das v. State of M.P., (1999) 3 SCC 500 : AIR 1999 SC 1031.

in fact have been earned cannot found an award.[17] The two cases together mark the working boundary—formulae assist quantification, but they do not relieve the claimant of the burden of proving that a profit was, on the balance of probabilities, lost.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *A.T. Brij Paul Singh v. State of Gujarat* (1984) 4 SCC 59 : AIR 1984 SC 1703 | Supreme Court, 1984 | On wrongful repudiation of a works contract by the employer, the contractor is entitled to damages for loss of profit on the unexecuted portion; a reasonable percentage of the value of the remaining work may be awarded as such profit. |
| *Dwaraka Das v. State of M.P.* (1999) 3 SCC 500 : AIR 1999 SC 1031 | Supreme Court, 1999 | Damages for loss of profit are recoverable on wrongful termination; the expectation interest is protected, and where direct proof is difficult a reasonable percentage of the contract value may be allowed as anticipated profit. |
| *McDermott International Inc. v. Burn Standard Co. Ltd.* (2006) 11 SCC 181 | Supreme Court, 2006 | The Hudson, Emden and Eichleay formulae are accepted methods of |

[17]McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181; Kanchan Udyog Ltd. v. United Spirits Ltd., (2017) 8 SCC 237.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | computing loss of profit and head-office overhead on disrupted contracts; the choice of formula and its application are matters of evidence within the province of the arbitral tribunal. |
| *Kanchan Udyog Ltd. v. United Spirits Ltd.* (2017) 8 SCC 237 | Supreme Court, 2017 | A claim to loss of profit must be established by cogent and reliable evidence; speculative projections, unsupported by material demonstrating that the profit would in fact have been earned, cannot found an award of damages. |

## IX. Interest on Damages

Interest is the temporal dimension of full compensation, and in money claims it is frequently the larger part of the recovery. In court proceedings the sources are familiar: pre-suit interest under the Interest Act, 1978 where the sum is certain, and pendente lite and post-decree interest at the court's discretion under Section 34 of the Code of Civil Procedure, 1908. The principles were comprehensively reviewed in *Central Bank of India v. Ravindra*, which addressed the vexed question of interest on interest and the limits of capitalisation.[18]

[18]Central Bank of India v. Ravindra, (2002) 1 SCC 367; Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, (2015) 2 SCC 189.

In arbitration the governing provision is Section 31(7) of the Arbitration and Conciliation Act, 1996, which confers a broad discretion. Unless the parties have agreed otherwise, the tribunal may award interest on the whole or any part of the money, for the whole or any part of the period between the accrual of the cause of action and the date of the award; and post-award interest runs, in default of a contrary direction, at the statutory rate from the date of the award until payment. In *Hyder Consulting (UK) v. Governor, State of Orissa* the Supreme Court held that interest forms part of the "sum" for which the award is made, so that post-award interest may run on an award that itself includes a component of pre-award interest.[19] The contours of the discretion were further marked in *Vedanta v. Shenzhen Shandong* (a uniform, reasonable rate is to be preferred to a mechanical or punitive one) and in *Morgan Securities v. Videocon* (the tribunal may, in its discretion, direct post-award interest on a part only of the awarded sum).[20]

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *Central Bank of India v. Ravindra* (2002) 1 SCC 367 | Supreme Court (Const. Bench), 2001 | Settled the principles governing the award and capitalisation of interest; interest on interest is permissible only within defined limits, and the court's discretion must be exercised on settled equitable considerations, not as a matter of course. |

Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, (2015) 2 SCC 189.
[20]Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465; Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd., (2023) 1 SCC 602.

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *Hyder Consulting (UK) Ltd. v. Governor, State of Orissa* (2015) 2 SCC 189 | Supreme Court, 2015 | Interest awarded under Section 31(7)(a) forms part of the 'sum' for which the award is made; post-award interest under clause (b) may therefore run on the aggregate, including the pre-award interest component. |
| *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co.* (2019) 11 SCC 465 | Supreme Court, 2019 | The tribunal's discretion as to interest must be exercised reasonably; a uniform rate across heads and currencies is generally to be preferred, and a rate that is punitive or unconscionable is open to interference. |
| *Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.* (2023) 1 SCC 602 | Supreme Court, 2023 | Section 31(7)(b) confers discretion on the tribunal to award post-award interest on the whole or any part of the sum; the tribunal is not bound to award such interest on the entire awarded amount. |

## X. The Taxonomy of Damages

It is convenient at this point to gather the heads of recovery into a single picture. Indian contract law recognises nominal damages (awarded where a breach is proved but no loss is shown, to vindicate the legal right); substantial or general damages (the principal head—direct, naturally arising loss, comprising loss of bargain, cost of cure and diminution in value); special damages (recoverable within the second limb of *Hadley* upon communicated special circumstances); and the restitutionary and reliance measures (recovery of a benefit conferred under Section 65, or of wasted expenditure incurred in reliance on the contract, available on rescission under Section 75). What the law does not recognise in a pure contractual claim is exemplary or punitive damages: Section 73 is compensatory to its core, and a tribunal purporting to award punitive damages in a contractual reference would act contrary to the fundamental policy of Indian law. The taxonomy is summarised in Figure 5.

**Figure 5 · The heads of recovery, and the exclusion of punitive damages.**

| DAMAGES FOR BREACH | compensatory in nature only |
|---|---|
| **Nominal** | Breach proved but no loss shown; a token sum vindicating the legal right. |
| **Substantial / General** | Direct, naturally arising loss — loss of bargain, cost of cure, diminution in value. |
| **Special** | Loss within contemplation by reason of communicated special facts. |
| **Restitutionary / Reliance** | Recovery of a benefit conferred (s. 65) or wasted expenditure on rescission (s. 75). |

| | |
|---|---|
| **Exemplary / Punitive** | NOT available in contract — s. 73 is purely compensatory; cf. tort. |

*Reliance and expectation measures are alternatives, not cumulative — wasted costs cannot be combined with loss of profit so as to produce double recovery.*

Two cautions attend the taxonomy. First, reliance and expectation are alternative measures, not cumulative: a claimant may recover his lost profit or his wasted expenditure, but not both, for to combine them is to recover twice for the same loss; and wasted expenditure is itself capped, for the defendant may show that the claimant would have made a loss on the contract in any event. Secondly, the characterisation of a claim as one for unliquidated damages has consequences beyond quantum. In *Union of India v. Raman Iron Foundry* the Court held that a claim for unliquidated damages does not become a sum due and payable until the loss is adjudicated and quantified; until then there is no debt that the claimant may unilaterally appropriate.[21] On the appropriation point the decision has been qualified by later authority, but the characterisation of unascertained damages endures and continues to shape the framing of money claims and the operation of 'no-debt-due' defences.

## XI. Damages in Arbitration: Substantive Continuity and the Scope of Review

The substantive law of damages does not change because the dispute is referred to arbitration; what changes is the intensity and character of the review to which the resulting assessment is subject. This is the practical pay-off of the structural point made at the outset. A tribunal applies Sections 73 to 75 exactly as a court would—the same compensatory measure, the same remoteness and mitigation principles, the same treatment of liquidated damages under Section 74. The difference lies

[21] Union of India v. Raman Iron Foundry, (1974) 2 SCC 231 : AIR 1974 SC 1265 (characterisation of unliquidated damages; the appropriation point modified by later authority).

downstream, in the court's supervisory jurisdiction under Section 34, which is emphatically not an appeal on the merits.

The modern jurisprudence is a story of expansion followed by deliberate contraction. *ONGC v. Saw Pipes* expanded the public-policy ground to include 'patent illegality', and for a decade exposed the quantum of arbitral awards to a searching review.[22] *Associate Builders v. DDA* then disciplined that review by confining it to defined categories: an award is perverse, and may be interfered with, only where no reasonable tribunal could have reached the conclusion, or where it is based on no evidence, or where it ignores vital evidence—mere inadequacy or excess of quantum is not a ground.[23] The 2015 amendment, construed authoritatively in *Ssangyong Engineering v. NHAI*, narrowed public policy to the fundamental policy of Indian law and the most basic notions of morality or justice, and confined patent illegality to domestic awards.[24]

The contraction has continued. *Dyna Technologies v. Crompton Greaves* counselled judicial restraint and emphasised that a reasonable, reasoned award on quantum is not to be disturbed; *Delhi Airport Metro Express v. DMRC* reiterated that a possible view taken by the tribunal, even if not the only view, is immune from interference.[25] The structural ceiling on the court's power is *Project Director, NHAI v. M. Hakeem*, which holds that a court exercising jurisdiction under Section 34 has no power to modify an award; it may set aside, or in a fit case remit under Section 34(4), but it cannot substitute its own figure for the tribunal's.[26] The available grounds, and their narrowing trajectory, are set out in Figure 6.

Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 : AIR 2003 SC 2629.
[23]Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[24]Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131; the public-policy ground was reshaped by the Arbitration and Conciliation (Amendment) Act, 2015 (s. 34(2A)).
[25]Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1; Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corpn. Ltd., (2022) 1 SCC 131.
[26]Project Director, National Highways Authority of India v. M. Hakeem, (2021) 9 SCC 1.

**Figure 6 · The narrow grounds for challenging an arbitral award of damages.**

| **Arbitral award of damages** |
|---|
| **SECTION 34 — narrow supervisory review only; no appeal on the merits, no re-appreciation of evidence.** |
| Patent illegality on the face of the award (domestic awards only, post-2015) — ignoring s. 73 / 74, want of reasons, or perversity. |
| Conflict with the fundamental policy of Indian law, or the most basic notions of morality or justice (public policy, read narrowly post-Ssangyong). |
| Perversity (Associate Builders) — no reasonable tribunal could so conclude; based on no evidence; vital evidence ignored. |
| **Mere inadequacy or excess of quantum is NOT a ground. The court may set aside or remit (s. 34(4)) — but CANNOT modify the award: Project Director, NHAI v. M. Hakeem (2021) 9 SCC 1.** |

For the advocate the consequences are concrete. Because the tribunal is the master of the evidence and the sole judge of its probative value, the contest over quantum must be won before the tribunal, not saved for the setting-aside court. A damages claim in arbitration succeeds or fails on the pleadings and the proof tendered at the hearing; an award that applies the correct legal measure and assigns reasons will withstand challenge even if a court might, on the same material, have assessed the loss differently. The same discipline governs the award of costs, now a substantive feature of the regime under Section 31(8), the importance of which the Court underlined in *ONGC v. Discovery Enterprises*.[27]

[27]ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 (costs and the conduct of arbitral proceedings).

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| *ONGC Ltd. v. Saw Pipes Ltd.* (2003) 5 SCC 705 | Supreme Court, 2003 | Expanded the public-policy ground to include 'patent illegality'; an award contravening the substantive law (including Sections 73/74) or the terms of the contract is liable to be set aside. The high-water mark of merits review, since curtailed. |
| *Associate Builders v. Delhi Development Authority* (2015) 3 SCC 49 | Supreme Court, 2015 | The tribunal is the sole judge of the quantity and quality of evidence; an award is perverse only where no reasonable tribunal could so conclude, or it is based on no evidence, or ignores vital evidence. Mere inadequacy or excess of quantum is not a ground under Section 34. |
| *Ssangyong Engineering & Construction Co. v. NHAI* (2019) 15 SCC 131 | Supreme Court, 2019 | Post-2015, public policy is confined to the fundamental policy of Indian law and the most basic notions of morality or justice; patent illegality is available only against domestic awards and |

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | not for an erroneous application of the law or re-appreciation of evidence. |
| *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.* (2019) 20 SCC 1 | Supreme Court, 2019 | Courts must adopt restraint; a reasoned award on quantum is not to be interfered with. Want of reasons may justify remission under Section 34(4) rather than setting aside, preserving the award where the defect is curable. |
| *Delhi Airport Metro Express (P) Ltd. v. DMRC Ltd.* (2022) 1 SCC 131 | Supreme Court, 2021 | A possible and plausible view of the tribunal, supported by reasons, is immune from interference; the patent-illegality and perversity standards do not licence a merits review of the tribunal's assessment of damages. |
| *Project Director, NHAI v. M. Hakeem* (2021) 9 SCC 1 | Supreme Court, 2021 | A court under Section 34 has no power to modify an arbitral award; it may set aside (wholly or in part) or remit under Section 34(4), but |

| Case & Citation | Court / Year | Ratio Decidendi / Governing Principle |
|---|---|---|
| | | cannot substitute its own assessment of damages for that of the tribunal. |

## XII. Concluding Observations

Taken together, the authorities disclose a jurisprudence that is principled rather than mechanical. The compensatory object stated in *Murlidhar Chiranjilal* supplies the measure; the contemplation rule of *Hadley v. Baxendale* and the mitigation principle of *British Westinghouse* supply its outer limits; and the long line culminating in *Kailash Nath Associates* confirms that even a freely negotiated liquidated-damages clause secures reasonable compensation only, and only where the breach has occasioned some loss. The arbitral overlay changes none of this; it changes only who decides with finality, and how little the courts may afterwards interfere.

For the practitioner the working lessons are three, and they apply with equal force in court and before a tribunal. First, a damages claim succeeds on evidence of loss, not on the bare existence of a clause: pleadings and proof must address both the fact and the quantum of injury, and in arbitration that contest must be won at the hearing. Secondly, a stipulated sum is a ceiling and a convenience, not a windfall—its enforceability turns on its character as a genuine pre-estimate and, where loss is provable, on proof of that loss. Thirdly, the duty to mitigate and the bar against remote loss continue to discipline recovery at both ends, and the burden of establishing a failure to mitigate rests on the party in default. These propositions, now firmly settled, should inform the framing of every contractual claim and the drafting of every compensation clause.

# DISCLAIMER

This compendium has been prepared by EquiCorp Associates LLP for general informational purposes only. It does not constitute legal advice and is not a substitute for advice from qualified legal counsel in relation to any specific transaction, regulatory filing, or compliance question. The Indian legal landscape for damages w.r.t. contractual disputes in India is subject to changes with evolution of jurisprudence; readers are advised to verify the current status of all instruments cited herein before acting on any information contained in this compendium. EquiCorp Associates LLP makes no representation as to the completeness or accuracy of this compendium and disclaims any liability for reliance on its contents.



***EquiCorp Associates LLP***

***New Delhi, June 2026***