

**1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION**

TEAM CODE- WS30_P

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

Ordinary original civil Jurisdiction

IN THE MATTER OF

MR.HEISENBERG.....PLAINTIFF

VERSUS

TRAVEL SOLUTIONS PRIVATE LIMITED.....DEFENDANT

Suit No. of 2017

Plaint on behalf of the Plaintiff

MEMORANDUM ON BEHALF OF THE PLAINTIFF

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INDEX OF ABBREVIATIONS

A.C.	Appeal Cases
A.I.R.	All India Reporter
All E.R.	All England Law Reports
All.	Indian Law Reports, Allahabad
A.L.J.R.	Allahabad Law Journal Reports
ALD	Andhra Legal Decision
A.P.	Andhra Pradesh
Bing. N.C.	Bingham's New Cases
Bom.	Indian Law Reports, Bombay
Cal.	Indian Law Reports, Calcutta
Camp.	Campbell's Reports
CA	Court of Appeal
D. & R.	Dowling & Rylands
Ex	Exchequer
EWCA	England and Wales Appeal
H. & N.	Hurl Stone & Norman
HL	House of Lords
Hob.	Hobart's Reports
H.P.	Himachal Pradesh
I.L.R.	Indian Law Reports
Jur. N.S.	Jurist New Series
K.B.	Law Reports, Kings Bench
L.B.R.	Lower Burma Rulings
L.J.	Lord Justice
L.R.	Law Reports
L.T.	Law Times
Lah.	India Law Reports, Lahore
M. & W.	Meeson & Welby
M.H.C.	Madras High Court Reports
M.P.L.J.	Madhya Pradesh Law Journal
M.L.J.	Madras Law Journal Reports
M.W.N.	Madras Weekly Notes
P.C.	Privy Council
P.L.R.	Punjab Law Reporter
Q.B.	Law Reporters, Queens Bench
SC	Supreme Court
SCC	Supreme Court Cases
TSPL	Travel Solutions Private Limited
T.L.R.	Times Law Reports
W.R.	Weekly Reporter

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BOOKS REFERRED

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- Dr. N. V. Paranjape; Law Of Torts
- Winfield and Jolowicz; Tort
- M P Jain; The Indian Constitutional Law
- Dr. S K Kapoor; Law of Torts
- R K Bangia; Law of Torts with Consumer Protection
- C K Takwani; Civil Procedure Code with Limitation Act, 1963
- Black's Law Dictionary, 7th Edition
- Mahendra C. Jain; Bombay High Court (Original Side) Rules
- P Ramanatha Aiyar's Advanced Law Lexicon, 4th Edition, Volume 3

RESEARCH DATA BASE

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- Lexis NexisAcademica, <http://www.lexisnexis.com/academica>
- Lexis Nexis Legal, <http://www.lexisnexis.com/in/legal>.
- SCC Online, <http://www.scconline.co.in>
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STATUTES

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- Constitution of India
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STATEMENT OF JURISDICTION

The Plaintiff most humbly and respectfully submits to the jurisdiction of this Hon'ble High Court of Mumbai that he resides and works for gain in Mumbai. The bookings with the Defendants were made at their office in Mumbai. The payment towards the booking were also made in Mumbai. Hence the cause of action has arisen within the jurisdiction of this Hon'ble Court thus this Hon'ble court has the jurisdiction to try, entertain, and dispose of the present plaint.

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STATEMENT OF FACTS

In July 2017 Mr Heisenberg planned a family vacation to Australia and approached TSPL for making arrangements for it. He was assured that the issuance of tourist visa generally takes 10-15 days. He wanted to book the tickets from Mumbai to Sydney for 08.09.17 but TSPL advised him to book tickets from Chennai to Sydney as they were cheaper.

On 07.08.17 Mr.Heisenberg was given a list of documents by Mr.Tommen and was asked to hand over the documents personally to him for scrutinising. Mr.Heisenberg submitted the documents by evening of 11.08.17 to the receptionist as Mr.Tommen had left the office. Mr.Tommen instructed the receptionist to dispatch the documents immediately.

On 21.08.17 Mr.Heisenberg got a call from TSPL Delhi office asking for an additional document and upon enquiry was informed that from 12.08.17 to 15.08.17 the office was closed due to public holidays. The documents dispatched on 16.08.07 were received on 18.08.17 and verified on 21.08.17. Mr.Heisenberg sent the document by express courier to Delhi on 22.08.17. TSPL received the documents and filed the visa form on 23.08.17.

On 06.09.17 visas were issued and the confirmation of the same was sent to Mr Heisenberg via WhatsApp. Due to time crunch TSPL advised that they would send the passports to Chennai airport directly.

On 08.09.17 Mr Heisenberg reached Chennai airport with his family at 2 pm and the passport reached by 9 pm hence they missed the flight and were informed that the flight from Chennai was non-refundable and the one from Mumbai was refundable.

Out of frustration, he tweeted "Travel Solutions Private Limited-a bunch of liars, cheats and thieves with no ethics. The worst company ever". He uploaded a picture of his entire family stranded at the airport along with a detailed post narrating the instant episode. He ended the post with #TSPLsucks and a logo of the company.The tweet and the post became viral.

Mr.Heisenberg sued TSPL for their negligence before the High court of Mumbai for a sum of Rs.1 Crore. TSPL has filed a counter claim of malicious propaganda and defamatory misinformation.

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STATEMENT OF ISSUES

1. **WHETHER THE PLAINTIFF PROVES THAT THE DEFENDANT ACTED NEGLIGENTLY?**
2. **IS THE PLAINTIFF ENTITLED TO COMPENSATION, IF YES, THE QUANTUM THEREOF?**
3. **WHETHER THE DEFENDANT PROVES THAT THE STATEMENTS OF PLAINTIFF AMOUNT TO DEFAMATION?**
4. **IS THE DEFENDANT ENTITLED TO COMPENSATION?**

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SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER THE PLAINTIFF PROVES THAT THE DEFENDANT ACTED NEGLIGENTLY?

It is most humbly and respectfully submitted before this Hon'ble High court of Mumbai that the Plaintiff proves that the Defendant acted negligently. There was a duty of care towards the Plaintiff because of the existence of an implied contract between them, which was breached.

ISSUE 2: IS THE PLAINTIFF ENTITLED TO COMPENSATION, IF YES, THE QUANTUM THEREOF?

It is most humbly and respectfully submitted before this Hon'ble High court of Mumbai that the Plaintiff is entitled to compensation as the Defendant owed a duty of care towards the Plaintiff which, due to the negligent acts of the Defendant, was breached and resulted in damages for which compensation is just and reasonable.

ISSUE 3: WHETHER THE DEFENDANT PROVES THAT THE STATEMENTS OF THE PLAINTIFF AMOUNT TO DEFAMATION?

It is most humbly and respectfully contended before this Hon'ble High court of Mumbai that the statements of the Plaintiff do not amount to defamation as they were true and fair comments. Also, the statements lacked malicious propaganda and were not defamatory.

ISSUE4: IS THE DEFENDANT ENTITLED TO COMPENSATION?

It is most humbly and respectfully contended before this Hon'ble High court of Mumbai that the Defendant is not entitled to compensation as the statements of the Plaintiff lacked ingredients of defamation.

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ARGUMENTS ADVANCED

**ISSUE 1: WHETHER THE PLAINTIFF PROVES THAT THE
DEFENDANT ACTED NEGLIGENTLY?**

It is most humbly and respectfully contended before this Hon'ble Court that the Defendant owed a duty of care towards the Plaintiff which was breached and resulted in consequential damages suffered.

Negligence is a breach of duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or do something which a prudent man and reasonable man would not do.¹

Negligence is conduct which falls below the standard established for the protection of others against unreasonable risk of harm.²

In *Iron and Coal Company v. M.Mullan*³, it was held that negligence is more than carelessness. It properly connotes the concept of duty, breach and damage suffered by a person to whom duty was owed.

1.1 EXISTENCE OF DUTY OF CARE

Duty of care is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any act that could foreseeably harm others.⁴ The test of foreseeability in reference to the test of directness came to be established by the decision of *Overseas Tankship (U.K) Ltd. v. Morts Dock & Engineering Co. (Wagon Mound Case)*.⁵

¹ Blyth v. Birmingham waterworks (1856) Ex 781 (784)

² Kuldeep singh v. Sstate of H.P; NarishGiri v. state of H.P.

³ 1934 AC 1(25)

⁴ Advance Law Lexicon , Volume 2, Fourth Edition

⁵ 1961 1 ALL ER 404

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The Defendant owes a duty of care towards the Plaintiff, which is an essential element to show negligence on the part of the Defendant.⁶

In *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd*⁷, again a new duty was recognized. It was held that the law will imply a duty of care when a party seeking information from a party possessed of a special skill trust him to exercise due care and that a negligent, though honest, misrepresentation in breach of this duty may give rise to an action for damages apart from contract or fiduciary relationship. The four ingredients of the case are enumerated below:

- a) Party seeking information:
The Plaintiff here approached the Defendant to inquire about its travel services to go on a vacation with his family.
- b) Party possessed of a special skill:
The Defendant here being a reputed and professional travel agency possessed a special skill because of which the Plaintiff laid his trust on it.
- c) Negligent though honest misrepresentation:
The Defendant's sales team advised the Plaintiff to book his tickets from Chennai, misrepresenting that they were more economical without revealing their non-refundable nature. Therefore, this breach of duty of care on the part of the Defendant gives rise to an action for damages.
- d) Fiduciary Relationship:
The Plaintiff here has made prior payment to the Defendant in exchange of its travel services which in turn gives rise to a fiduciary relationship wherein the Plaintiff was trusting the Defendant with its skilled travel services.

These principles were applied in *Home officer Dorset YatchCo.Ltd.*⁸, where the Defendant owed duty of care to the Plaintiff which was breached, making the Defendant liable for damages

⁶JeetKumariPoddary.Chittangang Engineering and electrical supply Co.Ltd(1964) ILR 2 Cal 433:United Insurance Co. Ltd v. Union of India(2011) 4 ALD 465

⁷ 1964 AC 465:1963 3 WLR101:1963 2 ALL ER 575(HL)

⁸ 1970 2 all ER 94(HL)

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Duty of care also applies in case of breach of an implied contract.

1.2 EXISTENCE OF IMPLIED CONTRACT

Implied Contracts are such as reason and justice dictate, and which the law presumes from the relations and circumstances of the parties.⁹

The principle of proximity refers to such a relation between the parties as it renders just and reasonable that liability for negligence may be imposed.¹⁰

The Plaintiff approached the Defendant to avail its travel services to go on a family vacation to Sydney. The Plaintiff was keen on booking the tickets from Mumbai via Singapore but for¹¹ the Defendant's advice that it will be more economical, the Plaintiff booked the tickets from Chennai, unaware of the fact that those tickets were non-refundable.

In exchange for its services, the Plaintiff made good the travel expenses to the Defendant. Therefore, the circumstances¹² and proximity¹³ of the parties give rise to the existence of an implied contract due to which the Defendant owed a duty of care towards the Plaintiff. Along with the existence of implied contract, there is proximity in the Plaintiff's and the Defendant's relationship.

Hence, the Plaintiff proves the Defendant's duty of care towards him.

1.3 BREACH OF DUTY ON THE DEFENDANT'S PART

Breach of duty is the violation of a legal or moral obligation; the failure to act as the law obligates one to act.¹⁴

The Defendant owes a duty of care to the Plaintiff to protect him from any kind of harm or injury.¹⁵

⁹ Advance Law Lexicon, Volume 2, Fourth Edition

¹⁰ Davis v. Radcliffe, (1990) 2 ALL ER 536 (PC), p. 540

¹¹ As the CA held: [2002] EWCA Civ 724

¹² Advance Law Lexicon, Volume 2, Fourth Edition

¹³ Davis v Radcliff (1990) 2 ALL ER 536

¹⁴ Black's Law Dictionary, Seventh Edition

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On 07/08/17, the Plaintiff was given a list of documents required for processing the Visa by Mr. Tommen, an employee of the Defendant. The Plaintiff being a layman was particularly concerned about the visa process but was assured by the Defendant that the issuance of tourist visa generally takes 10 to 15 days, and Mr. Tommen assured him that he would personally scrutinize the documents to ensure that all documents are proper to avoid any delay.

On 11/08/17, the Plaintiff submitted the required documents, unaware of the fact that the Defendant had failed to mention a document in the list of documents handed over to him. He submitted the documents to the receptionist as Mr. Tommen had left the office by the time he reached. Mr. Tommen here failed to exercise the duty of care which he owed to the Plaintiff as he had earlier assured him that he would personally scrutinize the documents. Instead, Mr. Tommen asked the receptionist to dispatch them immediately.

Another breach of duty on the part of the Defendant was that the documents should have been verified by the Defendant's Delhi office on 19/08/17 expeditiously but were verified only on 21/08/17 therefore causing delay.

Even after the late submission of the visa documents the Plaintiff was assured that the visas will be issued on time as all documents were in order. On 06/09/17, two days prior to the vacation, the visas were issued to the Plaintiff by the Australian Embassy and the conformation of the same was sent to the Plaintiff by the Defendant via WhatsApp. Relieved, the Plaintiff requested that the passports be dispatched immediately but the Defendant, again being negligent, advised him that the passports will be directly sent to Chennai Airport. On the day of travel the Plaintiff missed his flight as the Defendant failed to deliver the passports and visas to him on time, leaving the Plaintiff and his family stranded at the airport.

Lord Dwnedin in *Morton v. William Dixon Ltd.*,¹⁶ said, "breach of duty means that the thing which the Defendant did not do was a thing which was commonly done by any other person in the like circumstances or that it was a thing which was so obviously wanted that it would be folly in anyone to neglect to provide it."

¹⁵Sandhar v. Dept. of transport [2004] EWCA Civ 1440

¹⁶ 1909 S.C. 807

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Hence the Defendant compromised and neglected its duty towards the Plaintiff several times which resulted in grave loss to the Plaintiff¹⁷.

1.4 CONSEQUENTIAL DAMAGES SUFFERED

Damage means the harm or loss suffered or presumed to be suffered by a person as a result of some wrongful act of another.¹⁸ Money awarded to compensate for actual losses are known as actual damages or compensatory damages. The amount awarded is based on the proven harm, loss, or injury suffered by the Plaintiff.¹⁹

In *Henderson v. Merrett Syndicates Ltd.*,²⁰ the court recognized that the liability goes beyond statements and extends to the situation where the Defendant undertakes to perform a task or service for the claimant. As in this case it was agreed by the Defendant to provide them travel services.

In *Veran v. Krishnamorthy*²¹, it was held that, “When the circumstances of the act indicate that certain consequences might ensue, the reasonable man must be held to have foreseen the consequences or, at least, ought to have foreseen them.” The Plaintiff suffered damages because of the negligence of the Defendant which were foreseeable²².

The damages could have been avoided by the Defendant, which includes the Plaintiff’s financial expenses that he had incurred towards the booked air tickets, hotel reservation and all such monetary expenses amounting to economical loss²³, along with the mental trauma, agony, pain, hurt and emotional distress suffered by him and his wife and two children while they were stranded at the airport awaiting their passports and visas to go on a well-

¹⁷Gregg v. Scott [2005] 2 A.C 176 [79] per Lord Hoffmann

¹⁸ Advance Law Lexicon , Volume 2, Fourth Edition

¹⁹Advance Law Lexicon, Volume 2, Fourth Edition

²⁰ LT 1995 2AC 282

²¹ AIR 1996 Ker 172.

²²C. Czarnikow Ltd. v. Koufos [1969] 1 AC 350 &Arscott v. The Coal Authority [2004] EWCA Civ 892

²³ Winfield and Jolowicz on Tort 18th edition , 218

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planned and much awaited family vacation, had the Defendant not breached its duty of care.

1.5 ACTIONABLE NEGLIGENCE

The expression ‘actionable negligence’ means the neglect of the use of ordinary care or skill towards a person to whom one owes a duty of observing ordinary care and skill, by which neglect the other person suffers injury to his person or property.²⁴

The Supreme Court in *Jacob Mathew v. State of Punjab*²⁵, has held that “Actionable negligence consist in neglect of the use of ordinary care or skill towards a person to whom the Defendant owes the duty of observing ordinary care and skill, by which neglect the Plaintiff has suffered injury to his person or property.”

The Defendant has liability to repair the injuries occurred due to its neglect and lack of use of ordinary care and skill. Therefore, the Defendant’s negligence is actionable²⁶ as the Plaintiff suffered injury in the form of monetary loss and mental trauma.

Hence, the Plaintiff proves that the Defendant acted in negligence.

²⁴ Heaven v Pender,(1883) 11 QBD 503;Swan v. North British Australasian co.,(1862)7 H&N 603

²⁵ AIR 2005 SC 3180

²⁶ As emphasized in Junior Books Ltd v. Veitchi Co. Ltd [1982] 3 ALL ER 201

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ISSUE 2: IS THE PLAINTIFF ENTITLED TO COMPENSATION, IF YES, THE QUANTUM THEREOF?

It is most humbly and respectfully submitted before this Hon'ble Court that the Plaintiff is entitled to compensation.

Compensation in the general term used also in the Indian Contract Act, Sec-73²⁷ to denote payment which a party is entitled to claim on account of loss or damage arising from the breach of contract.²⁸

Compensation means anything given to make things equivalent, a thing given to or to make amends for loss, recompense, remuneration or pay.²⁹

As held in *Md. Mozaharal Ahmed v. Md. Azimaddin*,³⁰ the expression 'compensation' is not ordinarily used as an equivalent to damages, although compensation may often have to be measured by the same rule as damages in an action for a breach.

Damages are equivalent to the actual loss in respect to which they are allowed. It is the amount of money determined adequate to compensate for any actual loss or damage caused to the Plaintiff. It includes the payments to reimburse the damages such as medical expenses, lost income, pain and suffering.³¹

²⁷When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract: When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract

²⁸ Advance Law Lexicon, Volume 2, Fourth Edition

²⁹ State of Gujrat v shantilalmangal das, AIR 1964 SC 634 at p.644

³⁰Md. Mozaharal Ahmed v. Md. Azimaddin , AIR 1923 Cal 507 & Y.S Vivekananda Reddy v Govt of AP., AIR 1996 AP 403, 412.

³¹All Law Lexicon , Volume 2,Fourth edition

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Compensatory damages in a case where they are at large may include several different kinds of compensation to the injured Plaintiff. They may include not only actual pecuniary loss or any social disadvantages which result or maybe thought likely to result. They may also include the natural injury to his feelings, the natural grief and distress which he may have felt.³² As in the instant case the Plaintiff is entitled to compensation for the several damages that he and his family suffered due to the breach of the duty of care on the part of the Defendant.

The word compensation has a wide ambit and entitles a person to be compensated in terms of money as well as mental agony, harassment, emotional sufferings, physical discomfort for the loss suffered by him as observed by the Supreme Court in *Ghaziabad Development Authority v. Balbir Singh*³³.

2.1 ACTUAL LOSS

In this case the negligent acts of the Defendant resulted in late delivery of the passports and visa due to which he and his family missed their flight. The Plaintiff was also not informed about the non-refundable nature of the tickets. The Plaintiff suffered direct pecuniary losses of Rs. 15, 85,560/- towards the costs that he had incurred in booking the flight tickets, hotel reservations, etc for him and his family. Further the Plaintiff had to incur additional expenses to book return flight tickets to Mumbai from Chennai. Due to the last minute booking, the Plaintiff had to book the tickets at increased costs which amounted to Rs. 20,000 per person. Thus the Plaintiff claims this amount as well as additional compensation of Rs. 80,000 for this trouble. Therefore the actual monetary suffered by the Plaintiff is Rs.16, 65,560/-.

2.2. AGGRAVATED DAMAGES

Aggravated damages are damages to provide compensation for mental distress or injury to feelings caused by the manner or

³²All Law Lexicon, Volume 2, Fourth Edition

³³(2004) 5 Supreme court Cases 65

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motive with which a wrong was committed or by the Defendant's conduct subsequent to the wrong.

The Plaintiff, his wife and two children were excited and looking forward to the trip. They were waiting at the Chennai airport for the visas, but could not board the flight due to the failure and negligence of the Defendant. They were left stranded at the airport causing them disappointment, distress and mental agony. They could not go to the much awaited vacation because of the Defendant's negligence. Hence the Plaintiff is entitled to aggravated damages which usually are quantified at 5 to 10 times of actual damages but the Plaintiff is being fair and reasonable and therefore the Plaintiff be awarded aggravated damages being twice the actual loss and damages i.e. Rs. 33,31,120/-.

2.3 EXEMPLARY DAMAGES

Exemplary damages are awarded not to compensate the Plaintiff but to punish the Defendant and to deter him from similar conduct in future.³⁴

The Defendant is one of the premier companies operating in its field. The annual revenue from airline ticket booking in the financial year 2016-17 was Rs. 100.00 Crores. The Defendant earns a net margin of 15 % on the said business. Hence the net earnings from booking business of the Defendant for the year ended march 2016 were Rs. 1.5 Crore. The Plaintiff is entitled to Exemplary damages which are quantified at 3 times i.e. Rs. 49, 96,680/-, rounded off to Rs. 50.00 Lacs the actual loss and damage. It is submitted that any lesser amount may not have the desired effect on the operations of the Defendant at the same time the Plaintiff prays that this Hon'ble court may be pleased to award exemplary damages at a higher multiple. Therefore the Plaintiff is entitled to a total amount of Rs. 99, 93,360/- rounded off to Rs. 1 Crore.

³⁴Kudas v. Chief Constable of Leicestershire, (2001) 3 ALL 836

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ISSUE 3: WHETHER THE DEFENDANT PROVES THAT THE STATEMENTS OF THE PLAINTIFF AMOUNT TO DEFAMATION?

It is most humbly and respectfully contented before this Hon'ble Court that the statements of the Plaintiff are not defamatory because of the under mentioned.

Defamation is defined by Dr. Winfield as the publication of a statement which tends to lower the reputation of a person generally in the eyes of right thinking people of society or which tends to make them shun or avoid that person.³⁵

The wrong of defamation maybe committed either by way of writing, or its equivalent, or by way of speech. The term 'libel' is used for the former kind of utterances, 'slander' for the latter. Libel is a written, and slander is a spoken, defamation.

3.1 THE TWEET AND THE POST ARE NOT DEFAMATORY

Mere insult or abuse does not by itself constitute defamation, although it may be offensive to a man's dignity, unless and until it is proved to have lowered his reputation in the estimation of others.³⁶

In *Emerson v. Grimsby Times Telegraph Co. Ltd.*,³⁷ it was held that the statements or words which merely cause annoyance but do not reflect on character or reputation of the Plaintiff and cause him to be shunned or avoided by the people are not defamatory.

Vulgar abuse uttered in anger or bitter epithets used as abuse which can only hurt a person's pride are not considered libellous as they do not downgrade the reputation of the person to whom they are intended.

The Plaintiff had lost a lot of money owing to the negligence of the Defendant. Moreover, he was informed that the flight tickets are non-refundable much later when he had already missed his flight. He along with his entire family was stranded at the airport and had to undergo mental trauma. Therefore out of frustration the Plaintiff tweeted and posted the entire incident on his social media handle. It was an outburst which can occur within the spur of the moment. The statements made by the Plaintiff could not

³⁵Dr. Winfield: TORT 9 (Seventh Edition 2006) p. 298.

³⁶ B. Kalyani v. District Collector, Villupuran, (2012) 2 MWN (Civil) 133: (2012) 2 Mad LJ 881.

³⁷ 1926, 42 TLR 238.

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injure the Defendant's reputation though it may injure his self esteem.³⁸

3.2 FAIR AND TRUE COMMENT.

Mere exaggeration or even gross exaggeration would not make the comment unfair.³⁹

In *Merivale v. Carson*⁴⁰, it was held that legitimate criticism is no tort; should loss ensue to the Plaintiff, it would be *damnum sine injuria*, i.e. loss or damage without the violation or an infringement of a legal right. Such damage or a loss can impose no liability on a Defendant.⁴¹

As per Lord Denman in *Cooper v. Lawson*⁴², "it is not necessary to justify every detail of the charge or general terms of abuse, provided that the gist of the libel is proved to be in substance correct and that the details etc., which are not justified, produce no different effect on the mind of the reader than the actual truth would do."

If the matter is true, the purpose or motive with which it was published is irrelevant. It is enough if the statement though not perfectly accurate is substantially true.⁴³

The Plaintiff was left stranded at the airport in spite of several assurances by the Defendant that the passports and visa will be issued on time. The delay in the issuance was caused due to the negligence on the part of the Defendant. Furthermore, the Plaintiff suffered monetary loss as he was not informed about the non-refundable nature of the tickets.

³⁸Dr. N.V. Paranjape: Law of Torts, Third Edition, p. 409

³⁹*Merivale v. Carson*, (1887) 20 QBD 275.

⁴⁰1887 20 QBD 275: 58 LT 331.

⁴¹*Kingsley v. Delaware, Lackawalla and Western R.Co.*, 81 NJL 536, 80 A 327 (Ballentine's Law Dictionary)

⁴²1838, 8 AD & E 746, 753; *DainikBhaskar v. MadhusudanBhaskar*, AIR 1991 MP 162, p. 168.

⁴³*Alexander v. N.E. Ry.*, (1865) 11 Jur NS 619.

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3.3 ABSENCE OF MALICIOUS PROPAGANDA

Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves a ground of liability. Any act done with such an intent is, in the language of law, malicious.⁴⁴

When it is said that an act is done maliciously, one of two distinct things is meant. It is either meant that it is done intentionally, or that it is done with some wrongful motive.⁴⁵

The words of the libel and the circumstances attending its publication may themselves afford evidence of malice.⁴⁶

The words used by the Plaintiff in the tweet and the post were used in the heat of the moment and in the situation in which the Plaintiff found himself to be owing to the negligence of the Defendant. Before missing his flight, the Plaintiff had only good faith and wishes for the company. It is when he missed his flight that he reacted in the manner in which he did. Thus it lacks malice and cannot be equated with malicious propaganda.

Hence, the statements of the Plaintiff do not amount to defamation.

⁴⁴ Black's Law Dictionary, Seventh Edition, p. 968.

⁴⁵ John Salmond, Jurisprudence 384 (Glanville L. Williams., Tenth Edition, 1947).

⁴⁶ *Mati Lal Raha v. Indra Nath Bannerjee*, (1909) ILR 36 Cal 907.

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**ISSUE 4: IS THE DEFENDANT ENTITLED TO
COMPENSATION?**

It is most humbly and respectfully contented before this Hon'ble Court that the Defendant is not entitled to compensation.

In India, a distinction has been made between abusive language which amounts merely to an insult and abusive language which is both insulting and defamatory. In the former case it has been held, following the English law, that no action lies at all.⁴⁷

The words complained of by the Defendant were not understood to attribute any defamatory meaning, but were merely words of abuse.

It was held in *South Indian Ry. Co. v. Ramakrishna*⁴⁸, that the omission of a mere courtesy could not be taken to be equivalent to slandering or libelling, and is not an actionable wrong.

The Plaintiff and his family were looking forward to the trip and thus they had started planning months before. Owing to the negligence on the part of the Defendant, they could not go on their trip. To add to that, the Plaintiff suffered monetary loss and his entire family was agonised. Any prudent man, in similar circumstances, would react in the manner in which the Plaintiff reacted. Hence, the use of words like "liars", "cheats" and "thieves" fall under the purview of the mental state and situation the Plaintiff was in.

As the actions of the Plaintiff do not amount to defamation, the Defendant is not entitled to compensation.

⁴⁷*GirishChunderMitter v. JatadhariSadhukhan*, (1899) 26 Cal 653, F.B., where the words used were "sala", "haramzada", "soor" and "baperbeta"; *Bhooni Money Dossee v. Natobar Biswas*, ILR (1901) 28 Cal 452; *Girwar Singh v. Siraman Singh*, (1905) ILR 32 Cal 1060; *MaungKyaw v. Tha Dun U*, (1907) 4 LBR 50; *GirdhariLal v. Punjab Singh* (1933) 34 PLR 1071.

⁴⁸1889, ILR, 13 Mad 34; *Sri Raja Sitaram v. Sri Raja Sanyasi*, (1866) 3 MHC 4.

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PRAYER

Wherefore in the light of issues raised, arguments advanced and authorities cited, the Plaintiff most humbly prays before this Hon'ble Court to declare and adjudge that:

- That this Hon'ble Court may be pleased to declare that the Defendant through its negligence and breach of duty of care has caused loss and damages to the Plaintiff.
- That may be pleased to direct the Defendant to pay to the Plaintiff a sum of Rupees One Crore as damages and compensation for the loss, harassment and emotional distress caused to the Plaintiff as per Particulars of claim mentioned in the Plaint, along with interest thereon @ 18 % p .a from the date of the institution of this present suit till the date of the Decree and further interest @ 18 % p. a from the date of the decree till payment and/or realization.
- Cost of the suit be provided for.

And to pass any order or relief in Favour of the Plaintiff which this Hon'ble court may deem fit in the larger interest of justice.

For this act of kindness the counsel shall remain duty bound forever.

All of which is respectfully submitted.