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BEFORE

THE HON'BLE HIGH COURT OF BOMBAY

PLAINT FILED UNDER SECTION 6 OF THE CIVIL PROCEDURE CODE OF INDIA, 1908

Mr. HEISENBERG

(PLAINTIFF)

v.

TRAVEL SOLUTIONS PRIVATE LIMITED

(DEFENDANT)

WRITTEN SUBMISSION FOR PLAINTIFF

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LIST OF ABBREVIATIONS

ABBREVIATIONS	MEANING
• §	Section
• ¶	Paragraph
• &	And
• A.I.R	All India Reporter
• Anr.	Another
• Art.	Article
• TSPL	Travel Solutions Private Limited
• H.C.	High Court
• Id.	Ibid
• Ltd.	Limited
• No.	Number
• Ors	Others
• pg.	Page
• r/w	Read with
• Pvt	Private
• S.\Sec.	Section
• S.C.	Supreme Court
• U.O.I.	Union of India
• V.\ Vs.	Versus
• Vol.	Volume
• QB	Queen's Bench
• SCC	Supreme Court Cases
• KB	King's Bench
• UKHL	United Kingdom House of Lords
• AC	Appeal Cases
• All er	All Indian Reporter
• Lloyd's rep	Lloyd's Representative
• H&N	Hurlstone and Norman Ex-checker Reports

INDEX OF AUTHORITIES**LIST OF CASES**

Sr.No	NAME OF THE CASE	RELEVANT CITATION
1.	Bennett Coleman and Co. Ltd. and Ors. vs. K. Sarat Chandra and Ors.	AIR 1990 Ori 107
2.	Blyth v. Birmingham Waterworks Co	(1856) 11 Exch 781
3.	Cambhell v. Spottiswoode	(1863) 3 B&S 769
4.	Caparo Industries pic v. Dickman	UKHL 2,, 2 AC 605
5.	Cooper v. Lawson	(1838) 8 AD&E 746(1838) 8 AD&E 746
6.	Cooper v. Lawson	(1838) 8 AD&E 746(1838) 8 AD&E 746
7.	Dainik Bhaskar v. Madhusudan Bhaska	AIR 1991 MP 162
8.	Dainik Bhaskar v. Madhusudan Bhaskar	AIR 1991 MP 162
9.	Dillon LJ in Burton v. Islington HA	[1992] EWCA Civ 2
10.	Dillon LJ in Burton v. Islington HA	[1993] QB 204
11.	Haley v. London Electricity Board	[1965] AC 778

12.	Henwood v. Harrison	(1872) 7 LRCP 606
13.	Joseph M. Puthussery v. T.S. Joh	(2011) 1 SCC 503
14.	Joseph M. Puthussery v. T.S. John	2011) 1 SCC 503
15.	Kemsley Vs. Foot and Ors	1952 AC 345 HL
16.	Khushwant Singh v. Maneka Gandhi	AIR 2002 Delhi 58
17.	Kokan Unnati Mitra Mandal Ors vs Bennet Colema; Co. Ltd. & Ors	2012 (1) AllMR 359
18.	Life Insurance Corporation of India & Union of India v. Prof Manu Bhai D.Shah & Cinemart Foundation	AIR 1993SC 171
19.	Life Insurance Corporation of India ; Union of India v. Prof Manu Bhai D.Shah ; Cinemart Foundation	AIR 1993SC 171
20.	London Artists Ltd. v. Littler	[1969] 2 QB 375 CA
21.	Merivale v. Carson	(1887) 20 QBD 275
22.	of Indian Express Newspapers (Bombay) v. Union of India	AIR 1986SC872
23.	Overseas Tankship (UK) Ltd. v. Morts Dock and Engg. Co. Ltd,	(1961) 1 All ER 404,

24.	Overseas Tankship (UK) Ltd. v. Morts Dock and Engg. Co. Ltd	(1961) 1 All ER 404
25.	Prager v. Time Newspapers Ltd	(1988) 1 All ER 300
26.	Radheshyam Tiwari v Eknath Dinaji Bhiwapurkar and Others	AIR 1985 BOM 285
27.	Radheshyam Tiwari vs Eknath Dinaji Bhiwapurkar	AIR 1985 Bom 285
28.	Radheshyam Tiwari vs Eknath Dinaji Bhiwapurkar	AIR 1985 Bom 285
29.	Raghunath Damodhar v. Janardhan Gopal	(1891) 15 ILRBom 599
30.	Raghunath Damodhar v. Janardhan Gopal,	, (1891) 15 ILRBom 59
31.	Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum.	(1997) 9 SCC 552,
32.	Ram Jethmalani v. Subramaniam Swamy	126 (2006) DLT 535
33.	Reynolds v. Times Newspapers	(1999) 4 All ER 609
34.	Reynolds v. Times Newspapers,	(1999) 4 All ER 609
35.	Rustom K. Karanjia and Anr. v. Krishnaraj M.D. Thackersey	AIR 1970 Bom 424,
36.	South Hetton Coal Co. v. N.E. News Assn	(1894) 1 QB 133(143)
37.	Subramanian Swamy v Union of India, Ministry of Law and others	2016 AIR(SC) 2728
38.	Sutradhar v. Natural Environment Research Council.	[2006] UKHL 33

39.	T.V. Ramasubba Iyer and another Vs. A. M. Ahamed Mohideen	AIR 1972 MADRAS 398
40.	Toogood v. Spyring	149 E.R. 1044
41.	Union Benefit Guarantee Company Limited v Thakorlal P. Thakor and Others	AIR 1936 BOM 114
42.	Waghela Rajsanji Vs. Shekh Masluddin	(1889) ILR 13 Bom 330

LIST OF BOOKS

Sr.No	Name of the Book	Author
1.	The Law of Obligations	John Fleming
2.	Modern Tort Law	Vivienne Harpwood
3.	Law of Torts with Consumer Protection Act	R.K.Bangia
4.	The Law of Tort	Ratanlal and Dhirajlal
5.	Tort in Commercial Tort	James Edelman and James Goudkamp
6.	Tort Law Principles	Bernadette Richards and Melissa de Zwart
7.	Understanding Tort Law	Carol Harlow
8.	Essentials on Tort Law	William P Statsky
9.	Implementation of Basic Human Rights	Manoj Kumar Sinha

10.	Black's Law Dictionary	Henry Campbell Black
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LIST OF INTERNET SOURCES

Sr.No	Name of the Site
1.	www.manupatra.com
2.	www.westlawindia.com
3.	www.wexisnexusindia.com
4.	www.heinonline.com
5.	www.sconline.com

STATEMENT OF JURISDICTION

The Plaintiff have the honor to submit before the Hon'ble High Court of Bombay, which has inherent jurisdiction to try, entertain and dispose of the present case by virtue of The Bombay High Court (Original Side) Rules, 1980 along with the Section 6 of the Civil Code of Procedure, 1908.

STATEMENT OF FACTS

1. In July 2017, Mr. Heisenberg plans a family vacation to Australia, for which he contacted company providing travel services i.e. Travel Solutions Private Limited (**TSPL**), as he was assured by TSPL that the visa process would not take more than 10-15 days.
2. On the advice of **TSPL**, Mr. Heisenberg booked the tickets for his family from Chennai to Sydney dated 08.09.2017 instead of Mumbai to Sydney via Singapore.
3. Mr Heisenberg submitted these documents to TSPL on the evening of 11.08.2017 as prescribed by Mr. Tommen at the reception desk by which time Mr. Tommen had already left the office, nonetheless he instructed the receptionist to dispatch the documents immediately.
4. On 21.08.2017, Mr. Heisenberg got a call to submit an additional document. Mr. Heisenberg was furious as his documents were not submitted yet, he was informed that on 12.08.2017 and 13.08.2017 the office was closed because of Second Saturday and Sunday. 14.08.2017 and 15.08.2017 were national holidays. The documents were dispatched on 16.08.2017 and received only on 18.08.2017. Saturday and Sunday the embassy was closed. On 21.08.2017 upon verification, they realized that a document was missing.
5. The documents were sent via express couriers on 22.08.2017 and was delivered on 23.08.2017. The Visa Form was filed on the same day and Embassy issued the visas on 06.09.2017. On Mr. Heisenberg request to dispatch the passports, TSPL advised that due to paucity of time, passports would be sent directly to the Chennai airport instead of Mumbai.
6. On 08.09.2017, Mr. Heisenberg along with his family reached Chennai Airport by 14:00 hours. Unfortunately, the passports reached the airport only by 21:00 and they missed his flight. Mr. Heisenberg was very furious as he got to know that the flight was non-refundable and he had lost a lot of money and his family had to undergo the entire ordeal.
7. Out of frustration, he tweeted with a hashtag “#TSPL sucks” and a logo of the company which got trending next day. The incident drew widespread condemnation on the internet.
8. Mr. Heisenberg sued TSPL before the High Court of Mumbai for negligence claiming a sum of Rs. 1 Crore for the negligence on the part of TSPL and the same was defended by TSPL on the ground that issuance of visa is not in their hands and further claimed that Mr. Heisenberg was responsible for not submitting the documents in order.
9. Further, TSPL filed a counterclaim against Mr Heisenberg claiming the malicious propaganda amounting to tremendous loss of image suffered by TSPL.
10. The trial has completed and the case is posted for Final hearing.

STATEMENT OF ISSUES

- 1. WHETHER TRAVEL SOLUTIONS PRIVATE LIMITED IS LIABLE FOR THE OFFENCE OF NEGLIGENCE.**
- 2. WHETHER MR. HEINSBERG IS LIABLE FOR DEFAMING THE TRAVEL SOLUTIONS PRIVATE LIMITED.**
- 3. WHETHER TRAVEL SOLUTIONS PRIVATE LIMITED IS ENTITLED TO PAY THE COMPESATION OF RUPEES 1 CRORE TO MR. HEINSBERG.**

SUMMARY OF ARGUMENTS

I. WHETHER TRAVEL SOLUTIONS PRIVATE LIMITED IS LIABLE FOR THE OFFENCE OF NEGLIGENCE?

The arguments under this contention seek to establish that the parameters laid down to meet the judicial requirements for proving negligence are fulfilled i.e. (i) Reasonable care; (ii) Breach of Duty and (iii) immediate damage. Furthermore it was very evident from the actions of the Defendant s that due care was not taken from their end because of which the Plaintiff had to suffer loss of their flight tickets, hotels booking and the mental trauma cause to his family.

II. WHETHER MR. HEINSBERG IS LIABLE FOR DEFAMING THE TRAVEL SOLUTIONS PRIVATE LIMITED?

The Plaintiff takes the defence of Right to Freedom of speech and expression which is constituted within Article 19 of the Indian Constitution and is given as a Fundamental Right to all the citizens. Furthermore, the Plaintiff has also relied on the defence of truth statement. The statement which was published by the Plaintiff was done without any malice and is a fair comment which was made in interest of the public at large so that anybody else doesn't suffer the same losses.

III. WHETHER TRAVEL SOLUTIONS PRIVATE LIMITED IS ENTITLED TO PAY THE COMEPASATION OF RUPEES 1 CRORE TO MR. HEINSBERG?

In the light of the above issue it is submitted by the Plaintiff that there was a proven negligence in the acts committed by the Defendant as because of their negligent act the Plaintiff had to bear such a huge loss and his family had to undergo a mental trauma. Furthermore, since the published statement was a truth and was done for the benefit of public at large, Mr. Heisenberg is not liable for defamation and therefore, the Defendant is entitled to pay the damages to the plaintiff.

ARUGMENTS ADVANCED

I. WHETHER TRAVEL SOLUTIONS PRIVATE LIMITED IS LIABLE FOR THE TORT OF NEGLIGENCE?

1. The Supreme Court in *Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum*¹ held that it could be deduced that the Indian judiciary has expressly accepted the common law principles of torts as evolved by the courts in England. One has to keep in mind the extent of the suitability and applicability of such principles of law of torts to Indian conditions. It is therefore, necessary to consider and evolve our principles in tune with the English jurisprudence on liability in tort. It was observed by Justice Ramaswamy in the abovementioned case, that the principles as laid down by the House of Lords should be the guiding factors for appreciating the law of tortious liability. Hence before one can proceed any further, it becomes necessary to analyse the common law relating to negligence as laid down by the House of Lords through the centuries.
2. The term negligence was aptly summed up by Alderson B. in the landmark judgment of *Blyth v. Birmingham Waterworks Co*² as: "Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."
3. In the present case, The Plaintiff would like to argue that Respondent is liable in the tort of Negligence for the damages suffered by Plaintiff . In *Overseas Tankship (UK) Ltd. v. Morts Dock and Engg. Co. Ltd.*³ it was made clear that three elements are required for constituting Negligence: (a) Reasonable care; (b) Breach of that duty and (c) Consequent damage.⁴ Therefore, Plaintiff invites the court to examine these three requirements more closely.

(a) Reasonable Care

¹ (1997) 9 SCC 552, at p. 567

² (1856) 11 Exch 781

³ (1961) 1 All ER 404, at p. 414

⁴ Dillon LJ in *Burton v. Islington HA*

4. Plaintiff believes that the Respondent owed a duty of care towards Plaintiff in order to provide him a good and care free vacation with his family to Australia and the respondent shall take care of all the Administrative aspects. In order to determine whether there is a duty of care, Plaintiff is relying on the basic test established by the Court in the judgment of *Caparo Industries pic v. Dickman*⁵. According to the judgment of Caparo, a duty of care may now be imposed on, if the following three requirements are satisfied i.e. (i) damages must be foreseen; (ii) There must be a Relationship of Proximity between the parties; (iii) it must be Fair, Just and Reasonable in the circumstances for a duty of case to be imposed on Respondent and (iv) damage should be recoverable under negligence.

(i) Bearing in mind the kind of harm involved, damages should be foreseen:

5. First requirement is satisfied if it must be reasonably foreseeable for Respondent to occur the damage on Plaintiff . There are two points to consider whether Respondent must be able to foresee, bearing the kind of harm involved. For establishing the reasonable foreseeability, two elements are to be satisfied: (1) Respondent must foresee that the damage is to be caused to a particular Plaintiff rather than just to people in general⁶. (2) The duty must relate to a particular kind of harm which Respondent could reasonably foresee as arising from its actions⁷.

6. In the present case, Respondent was a company was involved in the services of providing of travel services and was responsible for providing a carefree travel to the Plaintiff . It is very evident how Respondent was lacking proper care while processing the visa application of the Plaintiff . It can be noticed that the documents of visa were to be scrutinised personally by Mr. Tommen of TSPL before despatching them to Delhi, but they weren't scrutinised by Tommen because of which a missing document couldn't be located and there was a delay in processing of Visa which in itself is an uncertain activity as it can be foreseen that by when the visas will be issued.

7. Furthermore, as per the factsheet, on 12 & 13 August the office of TSPL was closed on account of Second Saturday and Sunday respectively, whereas on 19th August, the

⁵ UKHL 2,, 2 AC 605

⁶ *Haley v. London Electricity Board*

⁷ *Caparo Industries pic v. Dickman*

Embassy was closed on account of Saturday but the Office of TSPL was open and the visa documents of Mr. Heisenberg could have been evaluated then instead of postponing them till 21st August.

8. Also it can be inferred that TSPL should have taken substantial care while couriering the visa documents and passports. As noticed, when the missing document which was couriered by Mr. Heisenberg from Mumbai to Delhi on 22nd August and was delivered on 23rd August i.e. in a span of one day through express delivery, then in that case even the TSPL should have considered the importance of the subject matter and should have couriered the documents of Mr. Heisenberg using the express delivery services in order to save time. From the foregoing reasons, Respondent clearly satisfied the abovementioned two elements, and it can be said that there was a lack of duty of care.

There was a proximate relationship between the parties.

9. Second requirement of Caparo test is the existence of proximate relationship between the parties. In many cases, proximity and foreseeability are treated as coextensive and even interdependent. Thus, when Respondent must be able to foresee the damage suffered by Plaintiff, the proximity is very likely to be satisfied. In addition, proximity means “a measure of control over and responsibility for the potentially dangerous situation”⁸
10. In this case, Plaintiff contacted the Respondent for his trip to Australia with his family. Plaintiff belonged to a category of people who might foreseeably be affected by the acts of the respondents. Hence, the Plaintiff and Respondent had sufficient proximity and it can be clearly propounded that the Plaintiff suffered all the losses because of the Respondent’s negligence as it was Respondent who had put in the request for visa at a later date, not checked the documents beforehand and gave an advice to receive the passports at Chennai Airport which eventually was received, but it was too late then. In all the above situations, loss was suffered by the Plaintiff because of the actions of the Respondent, which was naturally foreseen by the Respondent and could have been avoided if due care was taken. Thus, it can be concluded that there exists a proximate relationship between the parties.

⁸ [2006] UKHL 33, Sutradhar v. Natural Environment Research Council.

It is fair, just and reasonable to impose liability on Respondent for its careless actions.

11. Third requirement of Caparo test is that it was fair, just, and reasonable that Respondent owed a duty of care. However, this requirement usually overlaps with the previous two. Thus, this requirement is to be examined only when the public order might prevent Respondent from owing a duty of care.

12. In this case, Respondent would reasonably be able to foresee the damage suffered by the Plaintiff. So, Respondent was hired by the Plaintiff for the reason that they had expertise in the said field and would provide Mr. Heisenberg with the advice in their best interest and good faith, therefore TSPL owed a duty of care towards Plaintiff in order to have them complete their trip without any hassles. Therefore, in the present case, it is fair, just, and reasonable that Respondent was imposed with a duty of care.

The damages suffered by Plaintiff can be of the type recoverable under Negligence.

13. The fourth sub-requirement is that the damage suffered by Plaintiff can be recoverable. In this case, the harm suffered by Plaintiff was the sum of Rs. 1 crore which was made towards cancellation of air tickets, hotel reservations, mental trauma, agony etc. In this case, the damages claimed by Plaintiff were derived out of the carelessness caused by Respondent's conduct. Therefore, Respondent is liable for negligence and the damages suffered by the Plaintiff can be recovered under negligence from TSPL.

(b) Breach of Duty

14. In this case, Plaintiff believes that Respondent breached a duty of care which Respondent owed to Plaintiff by fulfilling their agreement and acting up to the desired standards.

15. It was established that Respondent did not satisfy the necessary standard of care. This standard requires that Respondent should reach the standard of an ordinary person, not a careful person⁹. In this case, Respondent could have checked the Visa documents at the Mumbai office before sending it to the Delhi office and also could have checked it on the

⁹ Blyth v. Birmingham Waterworks Company

Saturday which was the date of 19.08.2017 as it was a holiday for the embassy and not for the Travel Solutions office and initiated the process of application.

16. Furthermore, it was the duty and responsibility of the TSPL to send the passports to the Chennai airport in time after taking due care about the same, but by the time the passports reached the airport, flight already took off and the entire vacations of the Plaintiff went to vane. Being such a reputed travel agency in the country it was expected out of the TSPL to take due care and act more responsibly and lived up to the brand imaged.

17. Therefore it can be propounded that the Respondent owed a certain amount of Duty of Care to the Plaintiff and had breached the same duty. Therefore, Respondent breached a duty of care which it owed to Plaintiff.

(c) Consequent Damage

18. In this case, Plaintiff believes that the conduct of Respondent caused damages to Plaintiff. Following are the requirements needed to establish existence of causation. Firstly, the conduct of Respondent was the cause in fact. Secondly, Respondent is responsible for the probable consequence.

(i) Cause in Fact: the damages suffered by Plaintiff would not have occurred 'but for' the conduct of Respondent

19. First requirement is that the conduct of Respondent was a necessary condition of damages suffered by Plaintiff. In this case, the Respondent assured the Plaintiff that the visa would be granted easily within a period of 10-15 days and the application for the same was unnecessarily delayed and secondly they also suggested that the flight from Chennai would be more feasible than the one from Mumbai and acting on the advice of the Respondent without revealing it to be a non-refundable one. Therefore, except for the conduct of Respondent, there seems to be no reason as to how the Plaintiff suffered the said losses. It is highly probable that Plaintiff's loss would not have occurred but for the conduct of Respondent.

(ii) Probable Consequence: Respondent is responsible for the probable consequences of the conduct of Respondent

20. Second requirement is that the conduct of Respondent was the main cause of the damage suffered by Plaintiff. In this case, the Respondent is responsible for the damages suffered by Plaintiff. In this case, Respondents had the duty to submit the documents for visa application in after scrutinising all the documents and submitting them in reasonable time in order to make visa available to Mr. Heisenberg. But on the contrary, due to lack of carefulness of the Respondent, Mr. Heinsberg suffered the damage. Therefore, Respondent should be held liable.

II. WHETHER MR. HEINBERG IS LIABLE FOR DEFAMING THE TRAVEL SOLUTIONS PRIVATE LIMITED?

21. It is important to understand Defamation and its essentials to prove the absence of malice and that the publication comes under certain exceptions.

22. As per Black's Law Dictionary, defamation means "the offence of injuring a person's character, fame, or reputation by false and malicious statements." The term seems to be comprehensive of both libel and slander. Defamation can be divided into the following categories: Libel – Representation in a permanent form, e.g., writing, printing, picture, effigy or statute. Slander – Depiction in transient form. It is basically through words spoken or gestures.

23. In order to establish that a statement is libelous, it must be proved that it is (i) false, (ii) written; (iii) defamatory, and (iv) published.¹⁰ "There is no Statute in India dealing with civil liability for defamation, the rule of equity, justice and good conscience needs to be applied. This has been interpreted by the Privy Council in the case of Waghela Rajsanji Vs. Shekh Masluddin¹¹ to mean the rules of English Law if found applicable to India society and circumstances." Reference can also be made to the case of T.V. Ramasubba Iyer and another Vs. A. M. Ahamed Mohideen¹² where the Court stated the principle as follows :

¹⁰ Ratanlal and Dhirajlal, The Law of Torts 279 (LexisNexis, New Delhi, 26th edn., 2013).

¹¹ (1889) ILR 13 Bom 330

¹² , AIR 1972 MADRAS 398

"... The law of defamation as part of the law of torts is applied and enforced under the common law of England is applied to this country only on the basis of justice, equity and god conscience."

24. In another case it was decided by the courts that if a person needs to succeed in getting damages, then following must be established: (1) that the words or the acts must have been published with a malicious intention, (2) that they are defamatory and (3) that they have reference to the other person.

25. In the present case, conditions 3rd and 4th are satisfied as the alleged defamatory material refers to the Defendant and there has been publication of such alleged material on social networking website i.e., twitter. However, conditions 1st and 2nd have not been fulfilled. The material published falls under the exceptions of Truth and Fair Comment.

26. Malice in common acceptance means ill will against a person but in its legal sense means a wrongful act done intentionally without just cause or excuse. Absence of proper motive is termed malice in fact while term malice in law is taken to mean that defamation was wrongful and intentional. Inference of malice in law is successfully rebutted if the publisher is able to show that statement was made in the discharge of a public or private duty. It is immaterial whether that duty is a legal duty or a moral duty.

27. Reliance was placed upon in the case of Rustom K. Karanjia And Anr. v. Krishnaraj M.D. Thackersey¹³ and Toogood v. Spyring¹⁴, in which it was held that: "In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another, and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorized communications, and affords a qualified defense depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency and honestly made, such communications are protected for the common convenience and

¹³ AIR 1970 Bom 424, (1970) 72 BOMLR 94, ILR 1971 Bom 324

¹⁴ 149 E.R. 1044 at p. 1049

welfare of society, and the law has not restricted the right to make them within any narrow limits."

28. In the present case, the Plaintiff successfully establishes that he stated the truth and that he considered in his interest to criticize the poor services of the Defendant s at social media platform so as to let out his dissatisfaction and so that other people would not succumb to false and unfulfilled promises of the Defendant and end up losing their time and a huge part of their hard earned money because of negligence of the Defendant .

29. The Plaintiff essentially pleads that there is no defamation and the published material falls under the exceptions of Truth and Fair Comment.

Whether the Plaintiff was justified in making defamatory statement?

30. In opposed to the counterclaim filed by the Defendant , the Plaintiff pleads the Defense of Truth and Fair Comment available as exceptions under the Tort of Defamation and the Right to Freedom of Speech and Expression [Article 19 (1)(a)] guaranteed by the Constitution of India.

Plaintiff exercised his Right to Freedom of Speech and Expression.

31. The Plaintiff is perfectly justified in expressing his views in open with regards to the extremely poor service provided by the Defendant s in spite of them assuring that all the requirements would be complied with well within the time, which unfortunately they failed in doing. As an aggrieved person, every individual has a right to criticize the service of the company, for which he pays, if that company fails stand up to its promise.

32. Article 19 (1) (a) of the Constitution guarantees to all citizens right to freedom of speech and expression which means a right to express one's opinion either verbally or in writing, printing, films or any other manner. Under Article 19(2) of the Constitution of India, reasonable restrictions have been placed on the exercise of the said right to freedom of speech and expression, in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The importance of this freedom cannot be over emphasized as it forms a part of the fundamental rights which are

the touchstone of our democratic setup, and the Apex Court has also time and again reiterated its primacy.

33. In the celebrated pronouncement of *Indian Express Newspapers (Bombay) v. Union of India*¹⁵, the Apex Court held that the freedom of expression is the first condition of liberty and it occupies a preferred position in the hierarchy of liberties giving succor and protection to other liberties. The Apex Court in the case of *Life Insurance Corporation of India & Union of India v. Prof Manu Bhai D. Shah & Cinemart Foundation*¹⁶, also held that the freedom of speech is a basic human right and held as under: "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948).

34. The court in the case of *Ram Jethmalani v. Subramaniam Swamy*¹⁷ explained the defenses of truth, fair comment and privilege available in a suit for defamation as "Traditional defenses to an action for defamation have now become fairly crystallized and can be compartmentalized in 3 compartments : truth, fair comment and privilege."

Plaintiff made a fair comment so as not to constitute Defamation.

35. It is argued on behalf of the Plaintiff that the words complained of in this matter are really not defamatory of the Defendant Company, but are only a fair and bona fide comment on a matter of public interest.

36. What constitutes to fair comment can be seen from the below:¹⁸

"Any facts sufficient to justify that statement would entitle to succeed in a plea of fair comment. Twenty facts might be given in the particulars and only one justified, yet if that one fact were sufficient to support the comment so as to make it fair, a

¹⁵ AIR 1986SC872

¹⁶ AIR 1993SC 171

¹⁷ 126 (2006) DLT 535

¹⁸ Odgers on Libel and Slander (6th ed., 1929), at p. 166

failure to prove the other nineteen would not of necessity defeat the Defendant s' plea."

37. In the present case, the facts are that, the Defendant failed to provide the service as promised. They also failed to check the documents as required by them within the time period from 12.08.2017 to 20.08.2017, especially on the date of 19.08.2017 when their office was open. Their sheer carelessness in this regard led them realizing this error on 21.08.2017 instead of 19.08.2017. This led to series of events which ultimately resulted in Plaintiff and his family missing the flight as there was a delay in obtaining passport which resulted in costing a huge monetary loss to him. All these acts show inefficient work of the company and poor services provided by them. This unprofessional attitude of the Defendant induced the Plaintiff in letting out the disappointment and the frustration on the internet, where he gave feedback on the services of the company. The Plaintiff states that all these facts, series of events are sufficient to justify the statement made on internet and entitles the Plaintiff to succeed in his plea of defence of fair comment.

38. Therefore, what is necessary is that all the facts on which the comment is based should be stated. The facts of the case clearly state that the Plaintiff uploaded a picture of his entire family stranded at the airport with a detailed post. Here, the 'detailed post' complies with the requirement of stating facts on which the comment is based.¹⁹

39. "The aspect of the fair comment and the extent of fair comment is therefore, clearly laid down. The motives of the publisher are also required to be considered. They should be warranted by the facts. There should be absolute allowance of expression once the publisher in a bonafide way believed the facts to be true. In this case the publication is warranted by the facts."²⁰ Mere exaggeration or even gross exaggeration would not make the comment unfair.²¹

¹⁹ Kemsley Vs. Foot and Ors 1952 AC 345 HL

²⁰ Kokan Unnati Mitra Mandal & Ors vs Bennet Colemna & Co. Ltd. & Ors

²¹ Merivale v. Carson, (1887) 20 QBD 275, which overruled the case of Henwood v. Harrison, (1872) 7 LRCP 606 and followed Cambhell v. Spottiswoode, (1863) 3 B&S 769: 32 LJQB 185. See, South Hetton Coal Co. v. N.E. News Assn., (1894) 1 QB 133(143)

40. The term "public good", "public interest" is a vague concept.²² In the case of London Artists Ltd. v. Little²³ it was observed that "whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to make fair comment." Similarly in the light of the present case The Plaintiff considered in his and public interest to criticize the poor services of the Defendant s at social media platform so that other people would not succumb to false and unfulfilled promises of the Defendant and end up losing their time and a huge part of their hard earned money.

41. The Plaintiff has shown and proved the fair comment made by them in public interest. It is therefore argued on behalf of the Plaintiff that the words complained of are really not defamatory of the Defendant Company, but are only a fair and bona fide comment on a matter of public interest. And as laid down, if the words are such comment, they are not actionable.²⁴

Plaintiff published true statements.

42. The truth of defamatory words is a complete defence to an action of libel or slander though it is not so in a criminal trial.²⁵ But 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.²⁶

43. In the present case, the facts clearly show how disorganized the company was in getting the visa issued within time. The Defendant Company assured that the visa would be issued within time and advised the Plaintiff to book a flight from Chennai to Sydney (non-refundable) instead of Mumbai to Sydney (refundable). They failed to provide the complete list of documents and failed to check the documents received by them within the

²² Subramanian Swamy v Union of India, Ministry of Law and others 2016 AIR(SC) 2728

²³ [1969] 2 QB 375 CA

²⁴ Union Benefit Guarantee Company Limited v Thakorlal P. Thakor and Others AIR 1936 BOM 114

²⁵ Raghunath Damodhar v. Janardhan Gopal, (1891) 15 ILRBom 599; Reynolds v. Times Newspapers, (1999) 4 All ER 609, p. 614(HL), Joseph M. Puthussery v. T.S. John, (2011) 1 SCC 503

²⁶ PER LORD DENMAN in Cooper v. Lawson, (1838) 8 AD&E 746(1838) 8 AD&E 746, 753; Dainik Bhaskar v. Madhusudan Bhaskar, AIR 1991 MP 162, p. 168

time period from 12.08.2017 to 20.08.2017, especially on the date of 19.08.2017 i.e. Saturday when their office was open. The fact that the Defendant Company was in business for a long time, develops trust in the company, in the sense that the client is relieved with regards to the responsibility the company promises to undertake. Plaintiff trusted the Defendant who grossly defaulted in discharging its liability due to sheer negligence and reckless behavior in not anticipating the imminent holidays which an entity long in business would clearly have. Had the Company been cautious and responsible in issuance of visa, it would have easily realized the continuous forthcoming holidays during which the embassy would remain closed and then, would not have advised the Plaintiff to book a non-refundable flight after assessing the possible delay in issuance of visa.

44. The Plaintiff due to Defendant's negligence lost a huge amount of money in flight and hotel bookings and was left stranded at the airport with his family. All the frustration due to the carelessness of the Defendant induced him to resort to social media to express his frustration with a detailed post placing the blame on the company, where he has explained the truth and nothing else, narrating the whole incident in which the Defendant Company grossly failed to provide the services. The Defendant (here, Plaintiff) is entitled to plead justification of any alternative meaning which those words are reasonably capable of bearing.²⁷

45. Even if there is an apprehension that content may be of a defamatory nature, it is likely that publication would not be restrained except in exceptional cases. In non-exceptional circumstances, Indian courts have shown a tendency to support free speech, and have not displayed a tendency to grant injunctions which would have the effect of muzzling speech on the ground of possible defamation.²⁸

46. It is argued that the terms used by Plaintiff namely 'sucks' according to Collins and Oxford Dictionary means 'bad at something'. Here, the Defendant failed in providing proper services. The word 'liar' according to the Collins and Oxford Dictionary means 'someone who tells a lie'. The word 'cheat' according to Collins Dictionary means 'they do not obey a set of rules which they should be obeying'. The word 'thief' according to Collins Dictionary means 'person who steals. As already mentioned above, the gist of the

²⁷ Prager v. Time Newspapers Ltd., (1988) 1 All ER 300 : (1987) 132 SJ 55(CA) .

²⁸ Khushwant Singh v. Maneka Gandhi. AIR 2002 Delhi 58

liable in substance should be correct. And by those words the Plaintiff meant that the Defendant Company made promises which it couldn't fulfill due to its negligence and carelessness which led to them losing a lot of money.

47. Thus, the Plaintiff pleads that the publication comes within the exceptions of Truth and Fair Comment and therefore, does not amount to defamation. There was absence of malice and therefore the counterclaim of the Defendant fails.

III. WHETHER TRAVEL SOLUTIONS PRIVATE LIMITED IS ENTITLED TO PAY THE COMPESATION OF RUPEES 1 CRORE TO MR. HEISENBERG?

48. It has been proved by the Plaintiff in the above two issues that the Defendant is liable for Defamation and Negligence. All the essentials for both the torts have been met.

Negligence:

49. In Overseas Tankship (UK) Ltd. v. Morts Dock and Engg. Co. Ltd,²⁹ it was made clear that three elements are required for constituting Negligence: (a) Reasonable care; (b) Breach of that duty and (c) Consequent damage.³⁰

50. The Respondent owed a duty of care towards Plaintiff which it breached. To establish reasonable care, the following three requirements which have to be satisfied are i.e. (i) damages must be foreseen; (ii) There must be a Relationship of Proximately between the parties; (iii) it must be Fair, Just and Reasonable in the circumstances for a duty of care to be imposed on Respondent and (iv) damage should be recoverable under negligence which have been satisfied as under. All these ingredients are satisfied as will be seen below.

51. The documents for visa were to be scrutinised personally by Mr. Tommen of TSPL before despatching them to Delhi, but this wasn't done due to which a missing document couldn't be located and there was a delay in processing of Visa which in itself is an uncertain activity. Further, instead of scrutinizing the documents on 19th August, it was postponed

²⁹ (1961) 1 All ER 404, at p. 414

³⁰ Dillon LJ in Burton v. Islington HA

to 21st August. The TSPL should have considered the importance of the subject matter and should have couriered the documents of Mr. Heisenbeg using the express delivery services in order to save time.

52. For establishing satisfaction of the second ingredient, it is stated that the Plaintiff contacted the Respondent for his trip to Australia with his family. Plaintiff belonged to a category of people who might foreseeably be affected by the acts of the respondents. Hence, the Plaintiff and Respondent had sufficient proximity and it can be clearly propounded that the Plaintiff suffered all the losses because of the Respondent's negligence as it was Respondent who had put in the request for visa at a later date, not checked the documents beforehand and gave an advice to receive the passports at Chennai Airport which eventually was received, but it was too late then.
53. Respondent was hired by the Plaintiff for the reason that they had expertise in the said field and would provide Mr. Heisenberg with the advice in their best interest and good faith, therefore TSPL owed a duty of care towards Plaintiff in order to have them complete their trip without any hassles.
54. The harm suffered by Plaintiff was the sum of Rs. 1 Crore which was made towards cancellation of air tickets, hotel reservations, mental trauma, agony etc. In this case, the damages claimed by Plaintiff was a result of sheer carelessness of Respondent.
55. The second condition of establishing negligence, i.e., the breach of duty by the Defendant is satisfied as, it was the responsibility of the TSPL to send the passports to the Chennai airport in time, but by the time the passports reached the airport, flight already took off and the entire vacation of the Plaintiff went into vane. Being such a reputed travel agency in the country, it was expected from the TSPL to take due care and act more responsibly and live up to the brand image.
56. The third and the last condition is also fulfilled as it was the Respondent who assured the Plaintiff that the visa would be granted easily within a period of 10-15 days, the application for which was unnecessarily delayed by the Defendant Company's carelessness. Secondly, they also suggested that the flight from Chennai would be more feasible than the one from Mumbai and acting on the advice of the Respondent without revealing it to be a non-refundable one. Therefore, except for the conduct of Respondent,

there seems to be no reason as to how the Plaintiff suffered the said losses. Also, the fact that the Defendant Company 'profusely' apologized for their mistake of not efficiently providing the list of documents, clearly shows that the Defendant knew that it was at fault. Therefore, considering the above arguments, the Plaintiff concludes that the Defendant is liable for the tort of Negligence.

Defamation:

57. Plaintiff asserts that he did not defame the Defendant, as seen above, as all the essentials of Defamation are not met. In order to establish that a statement is libelous, it must be proved that (1) that the words or the acts must have been published maliciously, (2) that they are defamatory, (3) that they have reference to the Plaintiff, and (4) that they have been published.³¹

58. In the present case, conditions 3rd and 4th are satisfied as the alleged defamatory material refers to the Defendant and there has been publication of such alleged material on social networking website i.e., twitter and facebook. However, conditions 1st and 2nd have not been fulfilled. The material published falls under the Freedom of Speech and Expression [Article 19(1)(a)], and defenses of Truth and Fair Comment. Plaintiff had no malicious intentions.

59. Malice in its legal sense means a wrongful act done intentionally without just cause or excuse. Inference of malice in law is successfully rebutted if the publisher is able to show that statement was made in the discharge of a public or private duty. It is immaterial whether that duty is a legal duty or a moral duty.³² The Plaintiff considered in his interest and a moral duty to criticize the poor services of the Defendant s at social media platform so that other people would not succumb to false and unfulfilled promises of the Defendant and end up losing their time and a huge part of their hard earned money. Therefore, there was absence of malicious intent.

³¹ Radheshyam Tiwari vs Eknath Dinaji Bhiwapurkar AIR 1985 Bom 285

³² Radheshyam Tiwari v Eknath Dinaji Bhiwapurkar and Others AIR 1985 BOM 285

60. The truth of defamatory words is a complete defence to an action of libel or slander though it is not so in a criminal trial.³³ But 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.³⁴ The Plaintiff due to Defendant 's negligence lost a huge amount of money in flight and hotel bookings and was left stranded at the airport with his family. All the frustration due to the carelessness of the Defendant induced him to resort to social media to express his frustration with a detailed post placing the blame on the company, where he has explained the truth and nothing else, narrating the whole incident in which the Defendant Company grossly failed to provide the services.

61. The Apex Court in the case of Life Insurance Corporation of India & Union of India v. Prof Manu Bhai D.Shah & Cinemart Foundation³⁵, held that the freedom of speech is a basic human right and held as: "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers". The Plaintiff is perfectly justified in expressing his views in open with regards to the extremely poor service provided by the Defendant s in spite of them assuring that all the requirements would be complied with well within the time, which unfortunately they failed in doing. As an aggrieved person, every individual has a right to criticize the service of the company, for which he pays, if that company fails to provide what it promises to.

62. Thus, the Plaintiff pleads that the publication falls under Freedom of Speech and Expression, and the defences of Truth and Fair Comment and the statement made by the Plaintiff was for the favor of public interest. Therefore, does not amount to defamation. There was absence of malice and therefore the counterclaim of the Defendant fails.

³³ Raghunath Damodhar v. Janardhan Gopal, (1891) 15 ILRBom 599; Reynolds v. Times Newspapers, (1999) 4 All ER 609, p. 614(HL), Joseph M. Puthussery v. T.S. John, (2011) 1 SCC 503

³⁴ PER LORD DENMAN in Cooper v. Lawson, (1838) 8 AD&E 746(1838) 8 AD&E 746, 753; Dainik Bhaskar v. Madhusudan Bhaskar, AIR 1991 MP 162, p. 168

³⁵ AIR 1993SC 171

PRAYER

Therefore, in the light of the issues raised, arguments advanced, reasons given and authorities cited, it is humbly prayed before the Tribunal to adjudge and declare:

- I. That** the Defendant i.e. the Travel Services Private Limited is liable for the offence of Negligence.

- II. That** the act of posting on social media by the Plaintiff does not amount to Defamation.

- III. That** the Travel Solutions Private Limited is liable for the offence of Negligence and is entitled to pay the damages worth Rupees 1 Crore.

The Hon'ble High Court may also be pleased to pass any other order, which it may deem fit in light of justice, equity and good conscience.

All of which is respectfully submitted.

SD/-

(Counsels *for* the Plaintiff)