

***“1st Surana & Surana National Tort Law
Moot Court Competition”***

Before The High Court Of Judicature, Bombay

ORDINARY ORIGINAL CIVIL JURISDICTION

(Clause 12, Appendix B of the Letters Patent Act, 1948)

SUIT NO ___ OF 2018

Mr. Heisenberg

(Petitioner)

v.

Travel Solution Private Limited

(Defendant)

Memorandum on behalf of Petitioner

1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION

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1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION**STATEMENT OF JURISDICTION**

The Hon'ble High Court of Bombay has its Ordinary Original Civil Jurisdiction in this matter under **Clause 12, Appendix B** of the **Letters Patent Act, 1948** of the said court.

1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION**STATEMENT OF FACTS**

Mr. Heisenberg is a data analyst working with DataMax Company. Travel Solutions Private Limited [hereinafter TSPL] is a highly reputed private limited company based in Mumbai that provides travel services. For making arrangements for his trip to Australia, he contacted TSPL. TSPL advised him that the flight from Chennai to Sydney would be much cheaper and consider that he would be booking the tickets for his entire family, it would be more economical. Acting on the advice of TSPL, he got the flight bookings to Sydney through Chennai on 08.09.2017. He was given a list of documents required for the processing of visa on 07.08.2017 by Mr. Tommen of TSPL. He had requested him to secure the documents and give it to him personally so that he may scrutinize it. Mr. Heisenberg managed to submit the documents to TSPL on the evening of 11.08.2017 at the reception desk by which time Mr. Tommen had already left the office. Mr. Heisenberg called up Mr. Tommen who instructed the receptionist to dispatch the documents immediately to Delhi. On 21.08.2017, Mr. Heisenberg got a call from the Delhi office of TSPL informing him that an additional document was required and the information could not be made out earlier due to the holidays. On 06.09.2017, the Visas were finally issued to Mr. Heisenberg by the Australian embassy. TSPL received copies of the passports. Mr. Heisenberg requested that the passports be dispatched immediately. TSPL advised him that owing to the paucity time, it would too risky for the passports to be dispatched to Mumbai and instead passports would be sent to the Chennai airport directly. He left Mumbai on 08.09.2017 but missed his flight because of late arrival of the passports. Out of frustration, he tweeted “Travel Solutions Private Limited- a bunch of liars cheats and thieves with no ethics and was the worst company ever. Further, he uploaded a picture of his entire family stranded at the airport along with a detailed post placing the entire blame on the company.

MEMORANDUM ON BEHALF OF PETITIONER

1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION

STATEMENT OF ISSUES

ISSUE- I

WHETHER TSPL IS LIABLE FOR NEGLIGENCE?

ISSUE- II

WHETHER MR. HEISENBERG IS LIABLE FOR DEFAMATION?

1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION**SUMMARY OF ARGUMENTS**

ISSUE-I**WHETHER TSPL IS LIABLE FOR NEGLIGENCE?**

TSPL is liable for negligence as it had the duty of care to personally scrutinize the documents, duty to dispatch passport and visa responsibly, duty to give effective advice to receive passport, duty to provide proper information regarding visa processing document as it was a specialized agency who assumed responsibility and owed highest standard of care to the things that was foreseeable. Secondly, it has breached its duty by violating Bolam principle, by giving negligent statement, and by not following due diligence to the extent which they had breached fiduciary duty and finally as a consequence to the breach of duty, damages were incurred to Mr. Heisenberg.

ISSUE- II**WHETHER MR. HEISENBERG IS LIABLE FOR DEFAMATION?**

Mr. Heisenberg is not liable for defamation because the post on social media depicts truth. Secondly, the post tweeted was fair comment on a matter which is of public interest or submission to public criticisms is not actionable. Thirdly, Mr. Heisenberg had qualified privilege for statements published in a reasonable manner for which there is a public interest or for which there is a private interest of such importance to the public that it is protected by public policy.

1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION**ARGUMENTS ADVANCED**

[1]. WHETHER TSPL IS LIABLE FOR NEGLIGENCE?

1. Negligence is the breach of duty caused by the omission to something or an action which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something or an action which a reasonable man and prudent would not do. Actionable negligence consists in the neglect of the use of ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or a property.¹ The three essential of the tort of negligence are that [1] A legal duty to exercise due care on the part of party complained of towards the party complaining the former's conduct within the scope of duty,² [2] Breach of said duty, and [3] Consequential damage.

[1.1]. TSPL has a legal duty to exercise due care.

2. In the *Donoghue v. Stevenson*,³ it was observed that the courts are concerned with the actual relations who come before them in actual litigation, and it is sufficient to say whether the duty exists in those circumstances. The result is that the courts have been engaged upon an elaborate classification of duties as they exist in the respect of property, whether real or personal, with further divisions as to ownership, occupation or control and distinctions based on the particular relations of the one side or the another, whether manufacturer, service provider, and so on. In the way, it can be ascertained at any time whether the law recognizes a duty, but only where the case

¹ Jacob Mathew v. State of Punjab and Another, AIR 2005 S.C.

² Donoghue v. Stevenson, (1932) A.C.562, 579.

³ Blyth v. Birmingham water works co., (1856) II Ex. 781, 784.

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can be referred to some particular species which has been examined and classified.”⁴ The duty to take care arises out of various relations, which it may not be possible to enumerate exhaustively and the courts recognized new duty when they think that to be just. It has been stated by Lord Macmillan that the categories of Negligence are never closed.”⁵

3. In the present case, TSPL owes following legal duty to take care, (a) duty to dispatch passport and visa responsibly, (b) duty to give effective advice to receive passport, (c) duty to provide proper information regarding visa processing document, (d) to take into consideration the national holidays due to which the petitioner could suffer and which was the responsibility as an agent⁶, (e) duty to personally scrutinize the document.

[1.1.1]. TSPL owed highest standard of duty care because it is a specialized agency.

4. In the case of *Brown v. Hambric*⁷, it was held that today's travel agent is a fiduciary and a professional with a high standard of care equivalent to that imposed upon attorneys, doctors and accountants. Travel agents are best viewed as information specialists upon whom consumers rely for the provision of accurate information and confirmation of travel arrangements.”⁸ The role of the travel agent is to provide all relevant and necessary information.⁹ In such circumstances, the

⁴ (1932) AC 562,579.

⁵ *Ibid.*, at 619.

⁶ Moot Problem, Para 8.

⁷ 168 Misc. 2d 502, 638 N.Y.S. 2d 873 (1995).

⁸ *Ibid.*

⁹ Levin v. Kashmir World Travel, Misc 2d, at 247.

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plaintiff is not under the duty to safeguard himself against any unexpected negligence caused by the defendant.¹⁰

[1.1.2]. Foreseeability principle applies to TSPL.

5. The regulations of duty of care envisaged in Donoghue's principle,¹¹ foreseeability means a reasonable foresight of harm to persons whom it is foreseeable or is likely to be harmed by one's carelessness. In the instant case, there was direct relationship of travel agent and customer and therefore, reasonable foresight is obvious. In the general rule, the duty of care will be owed when it had a reasonable foreseeability that a person's act or omission might injure to another. One must take reasonable care to avoid acts or omissions which one can reasonably foresee and which is likely to injure other.¹²

6. Lord Atkinson's dictum, in *Adam v. Ward*¹³ is much quoted: 'A privileged occasion is an occasion where the person who makes a communication has an interest or a duty- legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it.' Therefore, TSPL had a legal duty to oblige all the conditions and should have conveyed the proper list of documents required for the visa processing. TSPL was not able to provide Mr. Heisenberg all the documents required due to which visa can't be processed on time.

¹⁰ *Ibid.*

¹¹ *Supra* note 2.

¹² *Ibid.*

¹³ (1917) AC 309, 334.

1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION**[1.1.3]. TSPL had duty of care of a reasonable prudent man.**

7. The qualities of prudence and care, both singled out in the negligence standard, have received attention from virtue ethicists. Both of these qualities go directly to the central concern of virtue ethics: the characteristics that make people's lives better or worse. Acting prudently involves making good judgments about what ends one should have and the most appropriate and effective ways to achieve those ends; acting carefully involves reflecting upon how one's conduct may imperil other people's safety, a prerequisite to their well-being.¹⁴

8. In *Hedley Bryne & Co Ltd v. Heller & Partners*¹⁵, it was held that there might be liability in tort for merely financial loss caused by negligent misstatement and the court spoke in terms of the maker of the statement having assumed or undertaken responsibility towards the other and that other relying upon it. In the instant case, the petitioner had assumed liability of personally scrutinizing the documents which Mr. Tommen failed to do so. TSPL have a standard of duty of care to act orderly like prudent person. The defendant should have to act like a prudent person and have highest authority and reasonable duty to get visa processed and deliver the visa on time.

[1.1.4]. TSPL had assumed responsibility of Mr. Heisenberg.

9. In the *Henderson v. Merrett Syndicates*¹⁶, assumption of responsibility came to prominence in the context of liability for statements and it was subsequently extended to cases in which the defendant undertook to perform a task for the claimant. While in the instant case, Travel

¹⁴ Prudence, Benevolence and Negligence: *Virtue Ethics and Tort Law: Heidi Li Feldman*, Georgetown University Law Center.

¹⁵ (1964) AC 465.

¹⁶ *Henderson v. Merrett Syndicates*, (1995) 2A.C. 145.

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Solutions Pvt. Ltd had assumed the responsibility and it breached that responsibility to perform its legal duty.

10. In the case of *Perett v. Collins*,¹⁷ the plaintiff sustained personal injuries when the light aircraft in which he was travelling during the test flight. The plaintiff issued proceedings in negligence. It was held that the plaintiff was entitled to assume that the appropriate safety requirements had been satisfied and that care had been taken when the aircraft was being inspected for these purposes. In the instant case also, it can be inferred that negligence occurred on the part of Travel Solutions Private Limited as the company had the responsibility and didn't follow principle of due diligence.

[1.2]. TSPL has breached legal duty to take care.

11. In *Blyth v. Birmingham waterworks co.*,¹⁸ “Negligence as a tort has been defined as an omission to do something which reasonable man under those circumstances would do or not doing that which a prudent and reasonable man would not do.” A defendant will be in breach of his duty to care if he takes less care that the reasonable person would have taken. The concept of reasonable person, which is one of the most important and ubiquitous construct in entire law of torts.¹⁹ Breach of duty means non-observance of due care which is required in a particular situation. The standard of care is that of reasonable man or of an ordinarily prudent man. If the

¹⁷ *Perett v. Collins*, (1998) 2 Lloyd's Rep. 255 at 263.

¹⁸ (1856) II Ex. 781, 784.

¹⁹ *Ibid.*

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defendant has not acted like a reasonable prudent man, there is negligence and breach of that duty.²⁰

[1.2.1]. TSPL violated the Bolam principle.

12. It has been observed that mere fact that the defendant complied with the general practice in a particular industry will not establish that the defendant met the standard of the reasonable person. This rule applies where the defendant is a professional.²¹ From the case of *Eckersley v. Binnie*,²² it has to be followed that a professional man should command the corpus of knowledge which forms part of his professional equipment. He should not lag behind other ordinary assiduous and intelligent members of his profession in knowledge of new advancements, discoveries and developments of his field. He should have such awareness as in ordinary competent practitioner would have of such deficiencies in his knowledge and the limitations of his skill. TSPL failed to procure the additional document that was required.

[1.2.2]. TSPL did not act due diligently.

13. The reasonable person takes into account of the general practice in the particular field in question. He also keeps his knowledge up-to-date.²³ The fact that the defendant failed to comply or has complied with a general practice may be evidence for the respondent. For performing due diligence, the risk must be one that is “not only imaginable but that there is some reasonable

²⁰ *Ibid.*

²¹ *Bolam v. Friern Hospital Management Committee*, (1957) 1 W.L.R.

²² (1988) 18 Con. L.R 1, 79.

²³ *Stokes v. GKN (Bolts and Nuts) Ltd.*, (1968) 1W.L.R 1776 at 1783.

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prospect or expectation that it will arise.²⁴ Here in the instant case, the risk was apparent and TSPL was under duty to make sure that their visa papers were filed with all documents properly attached and sent to embassy for getting visa on time and successfully travelling to Australia. In the United States, a travel agent is liable for injuries caused to the traveler if the agent did not act with due diligence in investigating the safety of the provider of travel that is acting as its principal.²⁵

[1.2.3]. TSPL breached its fiduciary duty.

14. A fiduciary relationship was created between the company and Mr. Heisenberg. It is the relation existing between parties wherein one of the parties is in duty bound to act with utmost good faith for the benefit of other party and confidence is reposed by one person in the integrity of other.²⁶ Agents owe a fiduciary duty to the customer, that is, the travel agent is the legal agent of the customer, as well as being the legal agent of the provider of travel.²⁷

15. Travel agents are still to be held to a high standard of care as they have the special expertise or knowledge that is essential to the travel industry, just as professionals in many other industries have similar standards. It is because of this expertise that the travel agent is sought out by the consumer, and it is this expertise that creates a fiduciary relationship with the consumer, a duty to act in good faith and in the consumer's best interests.²⁸ Travel agents may find they have

²⁴ Fallowka v Royal Oak Ventures Inc, (2008) NWTCA 4.

²⁵ Phil Cameron, *Travel Agents: Their Role and Liability*, available at: https://www.americanbar.org/publications/gp_solo/2013/may_june/travel_agents_their_role_and_liability.html

²⁶ Herbert v. Lankershim, 1937 9 Cal.2d 409, 483.

²⁷ *Supra* note 25.

²⁸ *Ibid.*

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placed themselves in a fiduciary capacity, and when the services do not live up to the expectations of the client, the travel agents could be liable, at least in part, for what went wrong²⁹ and in the instant case the travel agent is liable for three things particularly [1] It had the duty to provide all the documents that are required for visa processing, [2] Mr. Tommen acted negligently by not scrutinizing the documents personally, [3] Mr. Tommen didn't provide righteous advice to collect passports from Chennai airport.

16. Travel agents are best viewed as information specialists upon whom consumers rely for the provision of accurate and concise information. To a lesser extent travel agents are order takers and ticket dispensers. Travel agents interact directly with consumers and their influence is profound. In our case, Travel Solutions Private Limited breached its duty not giving all the required documents for filing of visa process. Chief amongst these expanding obligations are ongoing duties to investigate destinations, suppliers and tour operators and to convey needed and relevant information to consumers.³⁰ Travel agents must give correct information for use of tickets.³¹ The travel company didn't inform them that the air-ticket was non-refundable³² from Chennai to Australia and they failed to inform the petitioner the required documents for filing of visa process due to which ultimately resulted in economic loss and mental trauma and distress.³³

²⁹ *Ibid.*

³⁰ Barton v. Wonderful World of Travel, 28 Ohio Misc. 2d 6 (1986)

³¹ Vick v. National Airlines, 18,404 (1982).

³² Moot Problem, Para 13.

³³ Moot Problem, Para 17.

1ST SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION**[1.2.4]. TSPL made negligent statement which resulted in loss.**

17. In Australia in the case of *Tepko Pty Ltd. v. Water Board*³⁴, it has been held that to attract a duty of care in the case of negligent misstatement giving rise to economic loss, there must be reliance on the an assumption of responsibility on the part of such person making the statement. In our case, not informing that flight from Chennai to Australia was non-refundable and that he should have known that sending passports directly to Chennai might be risky because Mr. Heisenberg was a resident in Mumbai and the distance of Delhi to Mumbai is shorter as compared to distance from Delhi to Chennai. A negligent misstatement could give rise to liability in contract and also when the parties were in fiduciary relationship.³⁵ A contract or a fiduciary relationship could alone impose a duty of care not to make a negligent misstatement.

[1.3]. Damages incurred was in consequence of breach of legal duty.

18. The act or omission of the defendant's breach of duty must cause damage to the plaintiff. The duty to access the damages is, however, entirely upon the court. In so doing, the court resorts to the rules which regulate the practice of the courts. The court has to decide and determine every question which would ultimately enable the parties to obtain the final judgment in the case in the question, such as proper measure of damage to be applied, remoteness of the damage and the amount of which the plaintiff actually entitled to damages.³⁶ In the present case of Mr. Heisenberg, it is clear that the economic damage as well as mental distress is caused to Mr. Heisenberg due to non-delivery of visa on time.

³⁴ (2001) 75 ALJR 775.

³⁵ Nocton v. Lord Ashburton, (1914) AC 932

³⁶ Shaikh Gafoor v. State of Maharastra, AIR 2008 Bom 1637.

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19. In the case of *Rajkot Municipal Corporation v. Manjul ben Jayantilal Nakum & Ors*³⁷, the appellant failed to make periodical inspection and due to the negligence, death occurred. In the instant case, there was no personal scrutinizing of the documents by Mr. Tommen and which resulted in economic loss of Mr. Heisenberg.

20. In the case of *Punjab state civil supplies corp. Ltd v. Sikander singh*³⁸, it was held that a suit for damages by way of tortuous claim is maintainable only when someone has a duty to perform towards others under a statute or otherwise. There was shortage of wheat bags due to lack of proper supervision of the godown by the supervisor and was held liable for damages. In the instant case, TSPL breached its duty by not scrutinizing the documents personally as promised and giving negligent advice to Mr. Heisenberg.

21. In the similar case to the proposition *R Suyamb Ananthan & Others v. M/S Cox and Kings & Others*³⁹, the petitioner had filed for a compensation of 50 Lakhs towards deficiency in service of Singapore- Thailand tour in which they had to suffer mental agony and distress and they had to spend extra money for their conveyance and after filing case against the travel agent, they received compensation.

[2]. WHETHER MR. HEISENBERG IS LIABLE FOR DEFAMATION?

22. A Defamatory statement is a statement calculated to expose a person to hatred, contempt or ridicule, or to injure him in his trade, business, profession, calling or office, or to cause him to be

³⁷ 1992 ACJ 792.

³⁸ AIR 2006 SC 143.

³⁹ 1995 AIR 1592.

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shunned or avoided in the society.⁴⁰ In the Present case, the case would fall under the libel, which means publication of false and defamatory statement tending to injure the reputation of an entity or a person without lawful justification or excuse. Mr. Heisenberg is having the legal defenses which are available in torts which are stated as: [1] the post on social media was not defamatory because it depicts truth, [2] fair comment, [3] and had qualified privilege.

[2.1]. The Post on social media depicts truth.

23. The truth of defamatory words is a complete defense to an action of libel or slander though it is not so in a criminal trial.⁴¹ Truth is an answer to the action, not because it negatives the charge of malice but because it shows that the plaintiff is not entitled to recover damages. For the law will not permit a man to recover damages in respect of an injury to a character which he either does not, or ought not to possess.⁴²

24. As to the truth being, a complete defense to a charge of libel in a criminal prosecution, the same rule is applied as in civil actions for damages.⁴³ In the *State v. Bush et al*,⁴⁴ a criminal prosecution was brought by the state of Indiana against Bush et al, .editors of a newspaper in which the alleged libelous publication was made. The court in its brief and concise decision stated that the words published, were, in fact, true, whether published in good faith or not; the appellees were not guilty of the crime charged⁴⁵.

⁴⁰ Hindustan Unilever Ltd. v. Reckitt Benckiser India Ltd., ILR (2014) 2Del 1288.

⁴¹ Raghunanth Damodhar v. Janardhan Gopal, (1891) ILR 15 Bom 599.

⁴² M. Pherson v. Daniels, (1829) 10 B & C 263.

⁴³ Heilmanr v. Shanklin et al, 60 Ind. 424.

⁴⁴ 122 Ind. 42, 23 N.E. 677 (1890).

⁴⁵ *Ibid.*

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25. In the present case, Mr. Heisenberg tweeted “Travel solutions private limited- a bunch of liars, cheats and thieves with no ethics. The worst company ever”⁴⁶ justified through negligence that Mr. Tommen of Travel Solution Private Limited had assured Mr. Heisenberg to scrutinize the documents personally and provided list that did not contain all documents the required for visa processing and even they did not send the passport on Chennai airport on time as per their advice.

[2.2]. The Post on social media was fair comment on TSPL.

26. Fair comment on a matter which is of public interest or is submitted to public criticisms is not actionable.⁴⁷ This right is one of the aspects of the fundamental principle of freedom of expression, and the courts are zealous to preserve it unimpaired.⁴⁸ The word “fair” embraces the meaning of honest and also of relevancy. The view expressed must be honest and must be such as can fairly be called criticism.⁴⁹ The word “fair” refers to the language employed, and not to mind of the writer. Hence, it is possible that a fair comment should yet be published maliciously.⁵⁰ Mere exaggeration or even gross exaggeration would not make the comment unfair.⁵¹ Therefore, saying bunch of liars and company with no ethics and saying it the worst company⁵² was not unfair and comes under the ground of mere exaggeration.

⁴⁶ Moot problem, Para 14.

⁴⁷ *Kemsley v. Foot*, (1951) 2 KB 34.

⁴⁸ *Ibid.*

⁴⁹ *The Madras Times Ltd. v. Rogers*, (1915) 30 MLJ 294.

⁵⁰ *Thomas v. Bradbury Agnew & Co. Ltd.*, (1906) 2 Kb 627

⁵¹ *Merivale v. Carson*, (1887) 20 QBD 275.

⁵² *Supra* note 46.

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27. A court must accept that the words are recognizable as an expression of “comment” or opinion. “Comment” may include any statement of conclusion, inference, or observation that in context can be recognized as an evaluation, critique, or commentary.⁵³ An action for libel or slander in respect of words consisting partly of allegation of fact and partly of expression of opinion, a defense of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the fact alleged or referred to in the words complained of as are proved. So now it is enough for the commentator to get his basic fact right.⁵⁴

28. “Every statement which is defamatory gives rise to a presumption of malice. This is the legal malice which is the foundation of an action for defamation. But such presumption of malice is rebutted if the defendant proves that the occasion on which the words were published was privileged. Once the defendant has succeeded in rebutting the presumption of malice, the plaintiff’s action must necessarily fail, unless he establishes that the defendant was actuated by express malice which is malice in fact.”⁵⁵

29. In the case of *Lajpat Rai v The Englishman Ltd*,⁵⁶ it has been held that a necessary part of a plea of fair comment to show that there has been no misstatement of facts in the statement of the materials upon which the comment was based. In order to give room for the plea of fair comment the facts must be truly stated. If the facts, upon which the comment purports to be made, do not exist, the foundation of the plea fails.

⁵³ AHBL, *Defences available in defamation claims*, available at: defamationandrisklawblog.ahbl.ca/files/2012/05/Defamation-Defences.pdf

⁵⁴ *London Artist Ltd. v. Littler*, (1969) 2 Q.B. 375, 391.

⁵⁵ *Dr. P.H.Daniel And Anr.v. K.N.Krishnaiyer*, AIR 1982 Kerala 95.

⁵⁶ (1910) ILR 37 Cal 760.

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30. In the present case, Mr. Heisenberg post contain right fact as they had lost a lot of money towards the flight tickets in addition to the money spent on the hotel reservations due to delay of passport on Chennai airport which was TSPL responsibility and the matter to which the publication related was a matter of public interest, which is one of the requisites for a defense of fair comment being available. The comment was fair in the sense that it must be based on facts truly stated and consists in an inference, reasonably warranted by such facts and honestly drawn.

[2.3]. Mr. Heisenberg has qualified privilege.

31. ‘Privilege’ means that a person stands in such relation to the fact of the case that he is justified in saying or writing what would be slanderous or libelous in any one else. The general principle underlying the defense of privilege is the common convenience and welfare of society or the general interest of society.⁵⁷

32. A communication, injurious to the character of another made bona fide from a sense of duty, legal, moral, or social, and reasonably necessary for the due discharge of such duty, and made with a belief in its truth, is privileged.⁵⁸ There must in fact be an interest or duty in the person to whom the libel is published. It is not sufficient that maker of the statement honestly and reasonably believes that the person to whom it is made has such an interest or duty;⁵⁹ the person must have an interest in the matter communicated.⁶⁰ Therefore, what is published on a privileged occasion and is not actionable even though it may be defamatory and turn out to be untrue⁶¹but

⁵⁷ M.G. Perera v. Andrew Vincent Peiris,, AIR 1949 PC 106.

⁵⁸ Dawkins v. Lord Paulet, (1869) LR 5 QB 94.

⁵⁹ Hebditch v. Lord Paulet, (1869) LR 5 QB 94.

⁶⁰ Watt v. Longsdon, (1930) 1 KB 130.

⁶¹ Horrocks v. Lowe, (1974) 1 All ER 662.

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the privilege is restricted to the communication that is relevant to the duty or interest and does not extend to irrelevant matters.⁶²

33. In the present case, when Mr. Heisenberg had missed his flight and later known that flight from Mumbai to Sydney was refundable while the one from Chennai to Sydney was non-refundable, so due to furiousness and frustration and with the sense of duty of TSPL to inform it in advanced, upload the photo of his entire family stranded at the airport along with a detailed post placing the entire blame on the company. There is a qualified privilege for statements published in a reasonable manner for which there is a public interest or for which there is a private interest of such importance to the public that it is protected by public policy.

⁶² Surendranath v. Bageshwari Prasad, AIR 1961 Pat 164.

PRAYER

In light of the issues raised, arguments advanced and authorities cited, the counsel for the Defendant humbly prays that the Hon'ble Court be pleased to adjudge, hold and declare:

- TSPL is liable for Negligence.
- The petitioner is entitled to get compensation of Rs. 1 crore.
- The petitioner is not liable for defamation.
- Pass any other order that may deem fit in the interest of justice, equity and in a good conscious.

All of which is most respectfully submitted

(Counsel for the Petitioner)