

Mister Heisenberg vs Travel Solutions Private Limited on 11th March, 2018

REPORTABLE

IN THE HIGH COURT OF MUMBAI
CIVIL ORIGINAL JURISDICTION

CIVIL CASE NO. OF 2018

MISTER HEISENBERG

...PLAINTIFF

VERSUS

TRAVEL SOLUTIONS PRIVATE LIMITED

...DEFENDANT

DATE OF JUDGEMENT: 11.03.2018

J U D G E M E N T

1. The present case has to be considered from the stand point of cause of action with reference to section 20 and section 23 of the Code of Civil Procedure, where several subordinate courts have jurisdiction over the same suit, an application may be filed in the appellate court – the High court of Mumbai in this case.

2. Mr. Heisenberg works with Data Max as a data analyst. During July 2017, he decided to take a trip to Australia with his family and contacted Travel Solutions Private Limited (hereafter referred as TSPL), for making arrangements for his trip. TSPL assured him that the visa process will take up to 10-15 days and the tickets were simultaneously booked for Sydney via Chennai.

3. On 07.08.2017, Mr. Heisenberg was provided with the list of documents for visa, which he submitted on 11.08.2017. He was informed about the requirement of an additional document on 21.08.2017. Documents were dispatched by TSPL from Mumbai on 22.08.2017 and were received in Delhi on 23.08.2017. Visas were issued by the embassy on 06.09.2017 however, they were unable to reach Chennai on 08.09.2017 before Mr. Heisenberg's flight, in time as promised by TSPL. The passports reached only by 9:00 by which he had already missed his flight. He uploaded a post on social media criticising the actions of TSPL. After the aforesaid series of events, he filed a suit of negligence against TSPL to which a counterclaim was filed on the ground of defamation. The issues contended are whether TSPL was negligent in their conduct towards Mr. Heisenberg and whether he was guilty of making a defamatory statement towards TSPL.

4. The law of torts or civil wrongs in India is almost wholly the English law which is to be applied so far as they are applicable to Indian society and circumstances. When in a given case, statutory or customary law does not exist; Courts in India will be guided by principles of justice, equity and good conscience. In *Blyth vs. Birmingham Waterworks Co.*¹, negligence is described as "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." In the instant case, Negligence may arise either from acting carelessly or from failing to act when legally obligated to do so. As Lord Bridge stated in *Caparo Industries PLC vs. Dickman*² "It is never sufficient to ask

¹ (1856) 11 Ex Ch 781, 156 ER 1047

² [1990] UKHL 2, [1990] 2 AC 605

simply whether A owes B a duty of care. It is always necessary to determine the scope of the duty by reference to the kind of damage from which A must take care to save B harmless.”

5. In *Rajkot Municipal Corporation vs. Manjulben Jayantilal Nakum and Ors.*³, negligence has been viewed in three ways. Firstly, involving a careless state of mind; secondly, a careless conduct and thirdly, a tort in itself. Every case giving rise to tortious liability consists of injury and damage done due to negligence. In order to succeed in a negligence action, the claimant must prove that:

- The defendant owed him a duty of care;
- The defendant was in breach of that duty;
- The claimant suffered damage, which was caused by that breach of duty.

In the present case, Mr. Heisenberg had passed off his responsibility regarding the travel plan to TSPL as he felt that he could rely on them to act prudently. TSPL being a highly reputed company and a master at providing travel services was unaware of the notice mentioned of the Australian High Commission, New Delhi website that flight bookings or travel commitments should not be made until a visa has been issued. The department will not be liable for any financial loss incurred by clients whose visa application was finalised later than expected or where an application is unsuccessful.

6. TSPL owed a duty of care towards Mr. Heisenberg when he availed the company’s services and acted on their advice and assurance. This legal duty becomes further evident when TSPL begins to assist him in terms of his travel plans and the visa process, this implied offer and acceptance creates a duty of care which the Travel Agency was supposed to maintain toward him. The very first step to the travel plan that is booking the flight had been done under misleading circumstances where the travel agency failed to inform Mr. Heisenberg that the tickets were non-refundable and were booked under the garb of being economical.

³ (17.01.1997 - SC)

7. As a learned Judge K Ramaswamy says “Duty of care, on the other hand, is for more crucial concept as it fixes the boundaries of tort of negligence. The regulation of duty of care envisaged in Donoghue's principle, in its widest terms, has a reasonable foresight of harm to persons whom it is foreseeable or is likely to be harmed by one's carelessness and has in turn made it easy to hold in subsequent cases that there should be liability for negligently inflicting damage in new situations not covered by previous case law because damage was foreseeable. If want of duty of care is established, there comes to exist foreseeability of the damage and sufficient proximate relationship between the parties and it must be just and reasonable to impose such a duty.”
8. In *Caparo Industries PLC vs. Dickman*⁴, it has been held that “The salient feature of all these cases is that the defendant giving advice or information was fully aware of the nature of the transaction which the plaintiff had in contemplation, knew that the advice or information would be communicated to him directly or indirectly and knew that it was very likely that the plaintiff would rely on that advice or information in deciding whether or not to engage in the transaction in contemplation.” Moreover, according to Australian High Commission's rules, the department offers Priority Consideration to Visitor Visas (subclass 600), such as to Mr. Heisenberg and his family on the payment of an additional fee. The Travel Agency either due to their ignorant attitude towards Mr. Heisenberg's case or with the knowledge that due to their own shortcomings in terms of delay in submission of application and missing additional document, may have to pay the additional fee as compensation, did not inform him of the same. The negligent misrepresentation of facts by TSPL resulted in the delay in the receipt of Visa, which in turn resulted in delay in sending and thus failure to travel to Australia as planned by Mr. Heisenberg.
9. The contentions filed by TSPL is that there is an unmistakable remoteness of damage and delay in submission of documents could not have been foreseen since a combination of factors had a role to play in the same and these factors were not in the control of the travel agency. According to the test of probability and directness, a

⁴ [1990] UKHL 2, [1990] 2 AC 605

man is only responsible for the probable and direct consequences of his act. However, TSPL could have reasonably foreseen that there would have been a delay in submission of documents to the embassy, considering how there was a four-day holiday (12th, 13th, 14th and 15th of August) in between and they didn't care to inform about the same to Mr. Heisenberg.

10. As held by the defendant company that the factors involved in this case were unavoidable and unforeseen therefore contributing to an inevitable accident yet the fact cannot be ignored that satisfactory and reasonable amount of care in regard to the duty conferred upon them wasn't undertaken by the travel agency and hence contributing to the damages suffered by the plaintiff. The careless breach of duty will vary from case to case and it should not be unduly extended or confined or limited to all situations. The attending circumstances require evaluation and application to particular set of facts of a given case. The standard of care also varies in a particular factual situation. Mr. Heisenberg was provided with a list of documents on the 07.08.2017 from which there was an additional document that was missing, which caused further delay after the interval of a four-day holiday in between. There is a plain breach of duty in terms of provision of services and the manner of providing the same, Travel Company's constant affirmative and positive response had been deceptive in terms of performing their duty.

11. It was asserted by the travel company that the test of a reasonable man and the expectation of reasonableness from such individual, must not be imposed only on one party, one should not compel the other to predict what he himself could not have known. Therefore, TSPL could not have anticipated the events which also influenced the delayed issuance of visa. Despite, a reasonable man is said to be of ordinary prudence or intelligence, the question is if a reasonable man would have foreseen the damage and if he had, how he would have acted under the circumstances. This element of the test took birth from the "neighbour principle" deduced in *Donoghue Vs Stevenson*⁵, that is "The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour?"

⁵ [1932] UKHL 100, [1931] UKHL 3

receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be — persons who are so closely and directly affected by act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question”.

12. The defendant company also submitted the claim that there was third party dependency, that is the embassy in terms of performance of its obligations and duties towards Mr. Heisenberg. Insisting on the fact that issuing of the visa was not in TSPL’S control and that it has no authority to issue the visa or to hasten the process, this falls within the sole discretion of the Australian Embassy doesn’t free the travel agency from its liabilities. On the basis of the confident response by the TSPL that the process of issuance of visa will not take more than 10-15 days, the plaintiff chose to trust the well reputed Travel Company that specialises in providing these services and would know more than a layman. TSPL was not only negligent in terms of providing travel services but also failed to properly explore the procedure that in almost 90 % of the cases, the processing of a visa can prolong to 34 days and in 75% of the cases it can prolong to 19 days⁶.
13. The Plaintiff suffered monetary loss in regard to the missed flights, cancelled hotel reservations and underwent mental trauma in terms of explaining the entire situation to his family, consoling them and himself due to the reckless and careless conduct of the Defendant in breaching their legal duty towards the plaintiffs in terms of the deficient and imprudent services provided.
14. Further, it is also submitted that due to the inconvenience caused by TSPL to Mr. Heisenberg, the plaintiff posted such imputation on the social media platform, calling TSPL a bunch of liars, cheats and thieves with no ethics. The plaintiff also uploaded

⁶ 2 Australian Government, Department of Home Affairs, Individuals and Travellers, Visitor Visa (subclass 600),
<https://www.homeaffairs.gov.au/trav/visa-1/600->

a picture of his entire family at the airport with the logo of the company and ended the post with the hash tag TSPL sucks. The image was shared several hundred times along with his tweet. This incident drew widespread condemnation on the internet. As a consequence of this, TSPL filed a counterclaim against Mr. Heisenberg under Order 8 Rule 6 A of Code of Civil Procedure which is as follows: A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counter claim against the claim of the defendant, any right or claim in respect of a cause of action accruing to the defendant against the defendant either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not, provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.

15. Defamation is defined as an intentional false communication, either published or publicly spoken, that injures another's reputation or good name. The tort of defamation can also be committed through the publication of untrue defamatory statements by an individual via internet. The intention behind making such imputations should be to cause harm or with the knowledge that it will harm the goodwill of the person.

16. Considering the contentions and findings of both the counsel the substantial questions of law that arise for determination by this Court is whether the statement posted by the plaintiff is defamatory. Liberty of criticism must be allowed or we should neither have purity of taste nor of morals. Honest criticism ought to be and is recognised in any civilised system of law as indispensable to the efficient working of any public institution or office, and as salutary for private persons who make themselves or their work the object of public interest. In a recent case of Kokan Unnati Mitramandal and Ors v. Bennett Coleman & Co.Ltd. and Ors⁷, Honourable Mumbai High Court while dismissing suit for defamation filed by plaintiff has held that "defendants have shown and proved the truthfulness of the statements and fair comment made by them in

⁷ 9 November, 2011) (6) BomCR 475 HC

public interest. The defamation of the plaintiffs alleged by them is, therefore, amply justified. Moreover, Insult in itself is not a cause of action for damages on the ground of defamation⁸.

17. In the light of the present case, Mr. Heisenberg along with his entire family was stranded at the airport owing to the negligent behaviour of the TSPL. Not only their time and money got wasted but also the hopes and aspirations of going for a family vacation were shattered. Adding to their distress, he later discovered that while the flight from Mumbai to Sydney was refundable, the one from Chennai to Sydney was non-refundable. All these instances led the plaintiff to post a fair comment on social media regarding the services provided by the TSPL in public interest so that everyone got to see what kind of services in reality TSPL provided.

18. However, the impeccable reputation in the public estimation of the travel company has been denigrated, amounting to tremendous loss of image and goodwill. There is no iota of doubt that the post made by him was indeed a reality of the travel service provider which claims to be a reputed company, making false promises and then failing to discharge their duty yet it cannot be neglected that a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself. The internet publication has wider viewership, or a degree of permanence, and greater accessibility, than other fixed mediums of expression. Reputation is rarely an asset in respect of which damage can be calculated in financial terms but damages in defamation cases may be substantial, no doubt because awards reflect juries' ideas of the value of dignity and honour as well as reputation strictly so called.

19. Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on the posterity. The tone of the publication and the circumstances in which it was made shows that the plaintiff was inspired by frustration or anger since

⁸ 20 Prof. Imtiaz Ahmad vs Durdana Zamir CS(OS) 569/2006

he had lost a lot of money towards the flight tickets, hotel reservations in addition to the mental trauma and agony suffered by him and his entire family. It is submitted that grave prejudice and irreparable injury will be caused to the travel company if the post made by the plaintiff is not discarded.

20. In the light of the above observations, the statement posted by the plaintiff has tarnished the image and is defamatory and libellous against the travel company and therefore the Court grants a **permanent injunction** against the post made by plaintiff on social media and the trending hash tag as it is downgrading company's good will and reputation.
21. Furthermore, the Court orders TSPL to pay damages amounting to a sum of **Rs. 62,60,000/-** for its negligent behaviour towards Mr. Heisenberg, calculated under the following heads :-

| | |
|---|----------------|
| Flight Tickets | Rs.5,10,000/- |
| Hotel Reservations and other requirements | Rs.4,50,000/- |
| Loss of working hours and Productivity | Rs.3,90,000/- |
| Mental agony and trauma | Rs.42,00,000/- |
| Cost of litigation | Rs.7,10,000/- |

22. The claims made by the plaintiff, succeed and is allowed accordingly. Judgement and decree of the High Court stands. In respect of the facts of the case, we direct that the amount **Rs. 62,60,000/-** may be recovered from the defendant company since the plaintiff are entitled to the same in law.

MUMBAI;

11 MARCH 2018.