Paradox Of *"We Take All Precautions and Your Safety Is Our Priority"*

As vague and as unclear the title to this article may sound, our interactions with the quoted assurance in the title is omni-present in our daily lives, specifically for our *survival,* during this time of COVID-19 outbreak. In a situation which is exponentially worsening and where sitting at homes is akin to averting danger to one's life and lives of his or her loved ones, it goes without saying that *had the technological inventions and discoveries were not developed and executed by the utility service providers (with the heroic efforts of their employees), averting such danger itself would have been a pre-survival challenge!*

One such technology on which we, those who have access to the internet and a smart phone, are highly dependent (specifically for the delivery of essential groceries), are the mobile based utility applications. It is not *gainsaying* for such essential service providers to make such quoted assurances! On the other hand, we also have other utility applications for non-essential services which, more often than the former, are found to be unwearyingly advertising their high safety standards and precautions by quoting such assurances to make us use their services unhesitatingly - *be it ordering your favorite pizza or burger or momos!*

Without prejudice to my wish for their and our safety and without making any innuendo or implying any deficiency of service on their part, the present article is to only share my understanding of the legal liability which might follow in a remotely hypothetical situation- where, god forbids, the customers do get the deadly disease due to breach of such assurances. What further makes this title apt is the reasonably drawn inference (*which could be erroneous at times*) in this hypothetic situation to account the service provider liable on the basis of such assurances. In other words, if one contacts COVID-19 from such foods, malls, groceries, etc, can service provider be made liable to pay damages? One may answer in

Highlights

"As the service providers are merely indulging in sales puffery or by making such assurances, it is merely enabling us to know the steps and precautions the company is taking towards preparation, supply of food items, groceries etc to avoid contacting COVID-19, in my view, the service provider is nowhere intending to be contractually bound to recompense!"

"The service providers do have a duty to exercise reasonable care towards its users failing which, if any injury is caused due to such breach of duty and such injury is a foreseeable, then a tortuous claim to recover damages can be filed."

…"there also lies a remedy for the consumers under the Consumer Protection Act to recover damages caused due to 'deficiency of service' on part of the service providers"..

affirmative seeing the crafty assurances but my answer would be that it's *paradoxical!*

The answer to this lies on the very nature of such 'assurances' i.e. whether such assurances are *puffery* or *advertisements or information or explanation* (the terms which service providers would prefer to call it) or whether such assurances are *proposals or offers* (terms which customers should prove it).

To decipher this, let us digress and know about a case known by the name *Carlill vs. Carbolic Smoke Ball Co[1892] 2 QB 484* which is an English law case.

In this case, the company made a product called *"Smoke Ball"*. The company claimed it cure influenza and many other diseases. To support the same, the Company published advertisements in various newspapers claiming that it would pay £100 to anyone who got sick with influenza after using its product according to the instructions set out in the advertisement. The Company also published that it has deposited a sum of *£1000 with the Alliance Bank, Regent Street,* showing its sincerity in the matter. One lady, Louisa Carlill believing in the accuracy of the statement made in the advertisement with respect to efficacy of the smoke ball in cases of influenza, purchased one packet and used it precisely according to the instructions. However, she later caught influenza. Thereupon, her husband wrote a letter for her to the company, stating what had happened, and asking for £100 as promised in the advertisement. They refused and this action was brought in court before a special jury. Arguments were heard on both the sides. Though, the final verdict was given in favor of Mrs. Carlill who finally received compensation of £100. (She lived to the ripe old age of 96).

But, the reasoning of the Court may enable us to answer our query. Among the reasons given by the judges were that *firstly,* the advertisement was not a mere *sales puffery* mere but an unilateral offer to the entire world, *secondly*, the satisfying conditions for using the smoke ball constituted acceptance of the offer, *thirdly*, purchasing or merely using the smoke ball constituted good consideration and that the company's claim that £1000 was deposited at the Alliance Bank showed the serious intention to be legally bound. As in the above case, the court observed that the advertisement was not a "mere puff" and the very fact that £1000 was deposited with Alliance Bank, Regent Street, the company definitely meant seriousness to be legally bound.

However *apologetically,* this very reasoning might be used by the service providers to decline any claim for contractual damages in our case! As the service providers are merely indulging in sales puffery or by making such assurances, it is merely enabling us to know the steps and precautions the company is taking towards preparation, supply of food items, groceries etc to avoid contacting COVID-19, in my view, the serviced provider is nowhere intending to be contractually bound to recompense!, if one does contact COVID-19, due to its breach. Rather it is us who are offering to use such services at our own risk.

But there is a light to this dark tunnel! Nothing herein means that the service provider can avoid its tortious liability to pay damages, if an action of private negligence is brought against them due to negligence of their employees. In other words, and legally speaking, the service providers (and their employees) do have a *duty to exercise reasonable care towards its users* failing which, if *any injury is caused due to such breach of duty* and such injury is a foreseeable consequence of the employee's negligence, then a tortuous claim to recover damages can be filed. In addition to the above, there also lies a remedy for the consumers under the Consumer Protection Act, 2018 to recover damages caused due to 'deficiency of service' on part of the service providers!

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