

(2017) 09 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Case No : 590 of 2015

**CHIEF STATION MANAGER, SOUTH EAST CENTRAL RAILWAY & 2 ORS. Vs
MAMTA AGRAWAL**

Date of Decision : 12-09-2017

Acts Referred:

[Railway Act, 1989](#), Section 100

Citation : 2017 4 CPR 155

Hon'ble Judges : Dr. B.C. Gupta, Dr. S.M. Kantikar

Advocate : Sanjeev Kumar Verma, Mohd. Anis Ur Rehman

Judgement

1. Brief facts are that the complainant, Smt. Mamta Agrawal along with her son and daughter was travelling in Lokmanya Tilak Shalimar Express in S2-Coach on the berth No.33, 34 and 36 on 05-09-2011. She was carrying a suit case, one air bag and two bags (jholas). She put the suit case below the berth under the chain and lock. When the train arrived near Rourkela, she learnt that some miscreants have committed theft of her suit case. The suit case was containing articles worth Rs.3,00,000/- consisting of three gold chains (3 - tolas), two diamond rings and a simple ring along with cash of Rs.15,000/- and clothes of children. An FIR of theft was lodged at GRP Police Station, Jhargon, West Bengal and also another complaint by her brother Mr. Kamal Kishore Aggarwal lodged at GRP Police Station, Raigarh on the same day but the articles could not be found till date. Hence, the complainant filed the complaint before the District Consumer Disputes Redressal Forum, Raigarh (herein referred as District Forum).

2. The opposite parties Nos.1&2 filed their written statement before the District Forum and raised the preliminary objections about the territorial jurisdiction that the incident of theft was happened near Rourkela which is not a territorial jurisdiction of opposite parties Nos.1&2. Another contention was that the complainant had not intimated regarding the incident to the TTE and the guard who were at the duty at the time of incident. Also the complainant had not booked the articles and the verification was also not done. Therefore, the opposite party shall not be liable to pay any compensation to the complainant. As per Section 100 of the Railway Act, 1989, if the passenger is carrying any article

with him without booking then he himself will be responsible. The complainant has not booked the articles as per Section 100 of the Act. There is no responsibility of the opposite party. Hence, the complaint is not maintainable. The opposite party No.3 also filed written statement and contended that theft had occurred due to negligence of the complainant herself. Opposite party No.3 also submitted same response as opposite party No.1. The complainant has not mentioned any witnesses, the name of co-passengers, etc..

3. Considering the pleadings and evidence, the District Forum allowed the complaint vide order dated 12-07-2013 and directed the opposite parties to pay Rs.1,25,000/- and Rs.4,000/- towards mental agony along with Rs.1,000/- as cost. The District Forum held that during the course of the travelling, the railway is responsible for the theft of articles or goods which has caused loss to the passengers. Being aggrieved by the order of the District Forum, the opposite parties preferred appeal before the State Consumer Disputes Redressal Commission, Raigarh, Chattisgarh (hereinafter referred as the "State Commission"). The appeal was dismissed vide order dated 05-12-2014 on the ground that, the railway department failed to prevent entry of unauthorized persons in the reserved compartment, and it was a deficiency in service. Being aggrieved by the order of the State Commission, the opposite parties have filed this revision petition.

4. We have heard the learned counsel for the parties. Both the counsel reiterated their affidavit evidences filed before the District Forum. The learned counsel for the complainant vehemently argued that it was a deficiency in service on the part of the Railways. The counsel further stated that there was no security personnel, ATC, etc. with the train. Railways had also failed to examine the TTE before the consumer fora. He placed reliance upon the judgment of this Commission in General Manager, South Central Railway & Ors. Vs. Jagannath Mohan Shinde, R.P. No.3574 of 2007 decided on 11-04-2012 and another judgment of the Chhattisgarh State Commission in General Manager, South Eastern Central Railway, Bilaspur Vs. Smt. Pratima Tripathi, Appeal No.159 of 2010 decided on 30-10-2010.

5. The learned counsel for the opposite parties submitted that the GRP is not under the control of the Railways, but it is under the control of the State Government. There was no territorial jurisdiction of the District Forum, Raigarh in the instant complaint. The complainant had not intimated about the alleged incident either to the TTE or guard who were on duty at the time of incident. The complainant violated Section 100 of the Railway Act, 1989, i.e. complainant had not booked the articles as per the Act. Therefore, the opposite parties are not liable or responsible for the lost articles which were carried by the complainant with her. The counsel for the opposite party relied upon the case of Vijay Kr. Jain Vs. Union of India & Anr., SLP No.34738-34739 of 2012 decided on 02-07-2013 in which Hon"ble Supreme Court observed as under: "The District Forum dismissed the complaint by observing that the Complainant had negligently

placed his luggage on berth No.43. The District Forum relied upon the provisions of the Railway Act, 1989 and held that the railways cannot be held responsible for the goods which are not booked. The State Commission agreed with the District Forum that the respondents cannot be held responsible because the luggage was not booked by the petitioner. The National Commission opined that the finding recorded by the District Forum and the State Commission on the petitioner's own negligence in placing attachi case on berth 43 was a pure finding of fact and does not call for interference in exercise of the revisional jurisdiction under Section 21 of the Consumer Protection Act, 1986".

6. After our thoughtful consideration to the arguments advanced by both the parties, the first issue that merits consideration is about the jurisdiction. The complainant was travelling in Shalimar Express from Raigarh to Jhargram. Therefore, in our view, the jurisdiction to file complaint is vested in any of the fora. Secondly, the maintainability of complaint before District Forum, it has been discussed in number of judgments of Hon"ble Supreme Court and this Commission from time to time. It has been stated in many of these judgments that Section 3 of the Consumer Protection Act, 1986 provides an alternative remedy to seek redressal of their complaints from the consumer fora. Recently in Revision Petition No.1916 of 2014, The East Cost Railways & Anr. Vs. Kadambari Rama Joga Rao & Anr. , decided on 21-04-2017, and in the First Appeal No.451 of 2015, Western Railway Vs. Vinod Sharma , decided on 18-01-2017, it was held that the remedy provided under Section "3" of the Consumer Protection Act, 1986 was an alternative remedy given to the consumer to contest his claim with the opposite parties. The said order (supra) also discussed few judgments passed by the Hon"ble Supreme Court in State of Karnataka Vs. Vishwabharathi House Building Co-op. society , I (2003) CPJ 1 (SC), Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha (dead) through LRs , I (2004) CLT 20 (SC) and in Trans Mediterranean Airways Vs. Universal Exports , IV 2011 CPJ 13 (SC). The provisions of the Railway Claims Tribunal Act, 1987 and the Railways Act, 1989 were also discussed in the said order. The issue is, therefore, no more "res integra" and it is held that the consumer fora below had the jurisdiction to handle the complaint and hence, the same was maintainable before them. Thirdly, whether there has been any negligence on the part of the Railway officials in the matter of alleged incident for which the OP Railways could be liable. The complainant lodged an FIR but nowhere stated whether the complainant raised any hue and cry at the time of and whether she alerted other passengers or not. The complainant has also not stated to whom she informed at that time from Railway department whether it was a coach attendant or TTE or security personnel.

7. The main ground taken by the Railways is that under Section 100 of the Railway Act, 1989, a Railway Administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage, unless a railway servant has booked the luggage and gave the receipt and in that case also, it should be proved that such loss/damage, etc., was due to negligence or

misconduct on the part of the servants of the Railway Administration. In the present case, no such booking was made with the Railways and hence, the provisions of Section 100 of the Railways Act, etc., are applicable in the matter. In this context, this Commission has expressed its view on the provision of Section 100 of Railway Act in Revision Petition No.4098 of 2014, Union of India & Ors. Vs. Rama Shanker Misra & Anr. , decided on 07-08-2015. In Union of India Vs. Sanjiv Dilsukhrai Dave & Anr., I(2003) CPJ 72 (NC); Southern Eastern Railway Vs. Ku. Bharati Arora, I(2004) CPJ 114 (NC); Union of India & Anr. Vs. Anjana Singh Chauhan , IV (2014) CPJ 198 (NC). Therefore, in our view in the present case there was no negligence attributable to any specific employee.

8. On the basis of the foregoing discussion, we do not find any deficiency in service on the part of the Railway officials. The order passed by both the fora below are clearly perverse in the eyes of law and, thus, are set aside. We allow this revision petition and consequently dismiss the complaint with no order as to costs.