

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2272 OF 2023

(Against the Order dated 01/03/2023 in Appeal No. A/17/2015 of the State Commission
Delhi)

1. UNION OF INDIA

UNION OF INDIA THROUGH CHAIRMAN OF RAILWAY
BHAWAN, NEW DELHI
CENTRAL
DELHI

.....Petitioner(s)

Versus

1. SHAILENDRA JAIN

PRESENT RESIDENCE :- DHAN MANDI, NEAR JAIN
MANDIR, DISTRICT JHALAWAR
RAJASTHAN - 326001.

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE PETITIONER : FOR PETITIONER : MR. SANJEEV KUMAR VERMA,
ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT : MR. SHAILENDRA JAIN, IN PERSON

Dated : 29 August 2024

ORDER

1. The present Revision Petition has been filed by the Petitioner under Section 58(i)(b) of the Consumer Protection Act, 2019 (the "Act") against impugned Order dated 01.03.2023, passed by the State Consumer Disputes Redressal Commission, Delhi (State Commission) in First Appeal No. 17 of 2015. In the impugned Order, the State Commission allowed the appeal and increased the compensation that had been awarded by the District Consumer Disputes Redressal Forum-VI, New Delhi ('District Forum') in its order dated 18.12.14 in CC No. 627/2017.

2. For the convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. Mr Shailendra Jain, the complainant is referred as the respondent and the Union of India, the OP is referred as the Petitioner.

3. Brief facts of the case, as per the complainant, are that on 16.01.2013 he boarded Train No. 12724, AP Express from New Delhi to travel to Nagpur in the reserved berth No. 24 in 3rd AC Coach B/1 with reserved e-ticket bearing PNR No. 224-3015996. After the train departed from Bhopal Station, he discovered that his backpack, which contained a laptop, camera, charger, eyeglasses and ATM cards issued by SBI and PNB, with a total value of Rs. 84,450/- was stolen. Upon reporting the theft to the coach attendant, the complainant was

met with rudeness and was directed to the conductor, who wasn't traceable. Even RP or GRP person was nowhere to be found. Upon reaching Nagpur he lodged FIR No. 0038491 dated 17.01.2013 u/s 379 with GRP Nagpur Station. Alleging a deficiency in service on the part of the OP Railways, that theft might have occurred due to Railways allowing unauthorized passengers to enter the reserved compartments, resulting in a security lapse, and claimed Rs. 84,450/- for loss of goods, Rs. 1,00,000/- on account of harassment and Rs. 20,000/- towards the cost of litigation.

4. In its written version, the OP submitted that the inclusion of the Chairman, Railway Board, Rail Bhavan, New Delhi, as a party in the case was erroneous. Under the Indian Railways Act, legal actions should have been initiated against the General Managers of the relevant railway zones North Central Railway, Central Railway, and South Central Railway who were responsible for the train's operations during his journey. The Chairman was not connected to the matter, and the OP requested that the claim against him be dismissed. OP further stated that, according to railway regulations, valuables must be declared and carried at the passenger's own risk. The Railway administration cannot be made liable for of undeclared valuables, as these items did not fall under regular passenger baggage. The FIR filed by the Complainant was not admissible as evidence. His ticket was purchased solely for his journey and not for transportation of the alleged stolen goods. Consequently, there was no consumer relationship concerning the stolen items, rendering the case untenable. The OP denied that the Complainant had been traveling with the alleged stolen goods, citing a lack of evidence. Prevention of crimes such as theft in railways was the responsibility of the Govt Railway Police (GRP), an independent body under the State Govt. The Railway administration had no control over GRP and did not guarantee the safety of un-booked baggage. Therefore, the OP contended that the claim against the Railways was unsustainable. It was contended that the Complainant's luggage was not booked or registered with OPs. Since he did not declare the luggage or obtain a receipt, it was considered unregistered baggage carried at his own risk. Under Section 100 of the Railway Act 1989, the Railway is not liable for un-booked luggage. Thus, the OP contended that the Railway cannot be held responsible, and the claim should be dismissed on these grounds. OP also contended that jurisdiction to hear cases of robbery, and snatching under the Railway Act lay with the Railway Claims Tribunal, not this Forum. Given that the Complainant was unsure where the incident occurred and had filed the FIR in Nagpur, the OP argued that the case should be dismissed on jurisdictional grounds.

5. The learned District Forum vide Order dated 18.12.14, allowed the complaint with the following finding:

“Brief perusal of the record clearly establishes the factum of theft by FIR lodged on same day in Nagpur Coach attendant, conductor, GRP personal were all found missing or sleeping, which resulted in theft of luggage of passengers. This is a common problem faced by numerous passengers and railways cannot absolve itself of its own liability by shifting the blame on different departments and state police. The ticket fare paid to railways, make its accountable for safe and complete journey of passengers from point of boarding to point of embankments. Such incident in running train tantamount to imperfection in services we award Rs 5,000/- to complainant as compensation for harassment and mental agony and litigation expenses.”

6. Being aggrieved by the aforesaid order, the complainant filed First Appeal No. 17 of 2015 for enhancement of compensation and the State Commission vide Order dated 01.03.2023 allowed the Appeal and modified the Order passed by the District Forum as follows: -

“It is clear from the record that the coach attendant, conductor, GRP personal were found missing or sleeping during the course of journey and the said fact is also evident from Annexure-E/1(a) and Annexure E/1(b) of the present appeal. It is also clear from the order no. 98/TG-V/12/1 dated 11.09.1998 issued by Ministry of Railway that the train conductors shall ensure that the doors of the coaches are kept latched during run of the train and open them as and when required by the passengers. However, in the present case, the train conductor was found to be negligent or not available during duty hours. Therefore, there is gross negligence on the part of the Railway in providing its services to the Appellant.

It is clear from the record that the Appellant had suffered losses to the tune of Rs. 85,000/- due to theft in question, but the District Commission awarded a sum of Rs. 5,000/- only to the Appellant as compensation for harassment, mental agony and litigation expenses, which is not adequate in the present case. Since the Appellant suffered a loss to the tune of Rs. 85,000/- due to deficient service of the Respondent, it is appropriate that the Appellant would be given an amount of Rs. 1,00,000/- for the loss of goods, mental agony and litigation expenses incurred by him.

In view of the aforesaid discussion, we modify the judgment dated 18.12.2014 passed by District Commission-VI, Vikas Bhawan, I.P Estate, New Delhi - 110002 to the extent that the Respondent is directed to pay Rs. 1,00,000/- for the loss of articles due to negligent act of the Respondent, harassment & mental agony suffered by him and the cost of litigation. The rest of the contents of the judgment dated 18.12.2014 remains unchanged.”

7. Dissatisfied by the Order of the State Commission, OP filed the present Revision Petition with the following prayer:

“Admit the appeal, call for the records and after hearing the parties be pleased to set aside the impugned order dated 01.03.2023 passed by the Hon'ble State Commission, New Delhi in Appeal No. 17 of 2015;

And/or

Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the case in the interest of justice.”

8. The learned Counsel for OP vehemently argued that the judgment in this case was rendered without properly hearing the parties, raising significant concerns about due process. Although the District Forum had awarded a small compensation of Rs.5,000/- to the Complainant, the OP as a gesture of goodwill, offered this amount despite appealing the decision. The OP had sent a cheque for Rs. 5,000/- by Speed Post on 09.02.2016, but it was returned undelivered. It was reoffered on 17.02.2016 and he refused to accept it, choosing instead to contest the appeal. He failed to disclose critical details necessary to substantiate his claim. There was no allegation or evidence presented that any unauthorized passenger had entered the train, nor that the door of the coach had not been properly locked between 10:00 PM and 6:00 AM, as required by law. He failed to clarify whether he secured his back-pack with the chain and ring provided beneath the berth, nor had he specified where and how the alleged theft occurred. It was also pointed out that his claim for Rs. 84,450/- as the value of the stolen articles was inconsistent with the FIR Form 1-C, in which he mentioned a loss of only Rs.73,500/-. This discrepancy undermined the credibility of the entire claim, casting doubt on the validity of the proceedings. Moreover, the Complainant alleged the loss of two ATM cards from SBI and PNB but had failed to provide any evidence that he reported the loss to the banks or requested the cards to be blocked to prevent misuse. In the absence of such evidence, the loss is not established. The allegation of theft of back-back and its contents remained unproven. The Complainant failed to demonstrate that theft, if any, occurred was due to the negligence or misconduct of the Railways. The judgment was flawed and should be reconsidered. The claim of theft involving the Back-Pack and its contents remained unsupported, as no evidence was provided to show that he had even brought the Back-Pack into the compartment. He failed to prove that the alleged theft resulted from the Railway's negligence or misconduct, rather, there was clear negligence on the part of the Complainant, who should have been more vigilant in safeguarding his belongings. Given these shortcomings, the OP argued that the impugned judgment warranted reconsideration and thus, should be set aside. To learned counsel relied on the following judgments in support of the arguments:

A. Station Superintendent & Anr v. Surender Bhola, Civil Appeal No. 7116/2017, decided on 15.06.2023

B. General Manager & Ors v. Anupama Sharma, R.P. No. 2966/2017, decided on 12.03.2024

C. Vijay Kumar Jain v. UOI & Ors CA Nos.34738 - 34739/2012

D. UOI & Ors v. Rama Shanker Misra & Anr, (2015)CPJ653 (NC)

E. **Vivek Chibba v. South Central Railway, Bilaspur**, Revision Petition No. 1939 of 2016, decided on 20-01-2017

F. **Union of India v. Ramniwas**, II (2020) CPJ 4 (NC)

G. **GM, SER & Ors v Swapna Mukherjee**, I (2019) CPJ 541 (NC)

H. **Dinesh Agrawal v Indian Railway & Ors**, RP No. 3265 of 2014

I. **Northern Railway, New Delhi & Ors. v. Prasanta Kumar Ganguly**, RP No. 650 of 2015

9. The Complainant reiterated the facts of the complaint as initially presented, emphasizing the key elements and details outlined in the original submission. He affirmed his support for the findings of the State Commission, asserting that the conclusions drawn and the decisions made were correct and justified based on the evidence and arguments presented. In light of this, he sought that the Revision Petition be dismissed with costs, arguing that the petition lacked merit and that the judgment of the Learned State Commission should be upheld. He relied on this Commission's judgment in **Indian Railways & Ors. v Uma Agarwal** (RP/1099/2020), decided on 25.07.2023.

10. I have examined the pleadings and associated documents placed on records and rendered thoughtful consideration to the arguments advanced by the learned Counsel for the petitioner and the respondent appearing in person. parties.

11. The main issue to be determined is whether there was any negligence or deficiency in service on the part of OP Railways with respect to the alleged theft? If so, what is the liability of the OPs to compensate the loss?

12. It is an undisputed position that the back-pack in question was not booked or registered with the Railways as part of the travel. To attract liability upon the railway authorities under Section 100 of the Railways Act, the complainant needs to establish either of the following:

A. The back-pack of the complainant was registered or duly booked with the railway authorities for safe keeping; or

B. There was negligence or misconduct o part of the railway officials that led to the loss of complainant's back-pack

13. Undisputedly, the Railway policy requires passengers to declare valuables and book luggage to ensure some degree of responsibility on the part of the Railway administration. In the context of Railway travel, "booking" luggage means declaring it to the Railway authorities and having it formally registered as cargo or baggage, often accompanied by a

receipt or some form of documentation. When passengers do this, the railway assumes a degree of responsibility for the safety of that luggage. Evidently, what the Complainant carried was personal baggage which has not been declared. Thus, Railway authorities cannot be expected to assume responsibility for the safety of the said back-pack. It is a baggage which the Complainant carried at his own risk, and the railway's responsibility did not extend to such unregistered item. It is pertinent to note that the complainant merely alleged that the theft might have occurred due to unauthorized passengers entering reserved compartments, which was alleged to be a security lapse on the part of OPs Railways. However, no evidence any unauthorised entry or presence of such people was established. In **Union of India v. Ramniwas**, 11 (2020) CPJ 4 (NC), this Commission while dismissing complaint, observed as follows:

"Merely saying that some unknown person(s) may have come and stolen the luggage does not pass the test of reasonableness as not only has no other evidence has been offered to support this, there is nothing to suggest that the theft could not have been carried out by some passengers on board. In fact, this is precisely why the railways insist that luggage be booked, and be also accompanied by a mandatory declaration of valuables, if items of great value such as gold, silver is being carried. As this was not done, there really is no case of the complainant. The complaint cannot sustain."

14. Thus, due to lack of any significant evidence presented to prove that the Complainant's Back-Pack was indeed brought into the compartment or that any railway employees were negligent or deficient in providing service. Mere claim of theft without supporting evidence did not satisfy the burden of proof required to establish negligence on the part of the railway administration.

15. In **The General Manager, SER & Ors. v. Swapna Mukherjee**, | (2019) CPJ 541 (NC), decided on 06.02.2018, this Commission held:

"11. Upon a careful examination of the complaint and the orders of both the State Commission and District Forum, we find that there are cogent grounds to believe that facts of the case have not been fully appreciated against the law governing such matters as contained in Sec 100 of the Railways Act and the Rules under Coaching Tariff No. 24 Part 1 Vol 1.

13. ...First, the legal position is abundantly clear viz. the passenger carrying his own luggage with him in the compartment is responsible for it's safe keeping and the Railways are not liable for any loss therein unless their negligence and/or misconduct is established. Second, it is clear upon a reading of the order of the State Commission as also of the District Forum that they accepted the contention of the complainant about the loss. Even if that was alright, they ought to have deliberated upon whether the responsibility for the loss could be fixed on the railways. This would have been possible only if the complainant could have established that there was negligence on the part of railway employees. This has not been done in the complaint which only contains a

remark that there were no security guards. Nor has this aspect been gone into by the fora below. Third, it was for the complainant to prove his case, not for the railways to prove the complainant's case. In other words, there is nothing in the orders of the lower fora to show that the facts and legal position have been duly appreciated together and in entirety. We are therefore of the considered view that the order of the State Commission is liable to be set aside."

16. Drawing from the aforesaid judgment, it is clear that the learned State Commission and learned District Forum erred in fixing the responsibility on the OP - Railways for the said undeclared back-pack, coupled with the lack of evidence for security lapses or negligence by railway staff. OP-Railways administration was not liable for the alleged theft of the said luggage as claimed.

17. Similar view was taken by this Commission in The Eastern Railways & Another Vs Amrita Gupta & Another vide order dated 28.03.2024 in RP No. 3349 of 2016.

18. Based on the discussion above, the findings and orders of the learned District Forum and learned State Commission are unsustainable and, therefore, liable to be set-aside. Consequently, the impugned Order passed by both the Courts below are set aside and the complaint is dismissed. The Revision Petition No. 2272 of 2023 is allowed.

19. There shall be no order as to costs. All pending Applications, if any, are also disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER