

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 544 OF 2016

(Against the Order dated 22/04/2016 in Complaint No. 34/2015 of the State Commission
Madhya Pradesh)

1. RATI TRIPATHI & 2 ORS.

D/O. SHRI MAHENDRA NATH TRIPATHI, R/O. 118/481
KUSHAL PURI,
KANPUR
UTTAR PRADESH

2. MAHENDRA NATH TRIPATHI

S/O. LATE SHRI NARAYAN DATT TRIPATHI, R/O. 118/481
KUSHAL PURI,
KANPUR
UTTAR PRADESH

3. SMT. MITHYA TRIPATHI

W/O. SHRI MAHENDRA NATH TRIPATHI, R/O. 118/481
KUSHAL PURI,
KANPUR
UTTAR PRADESH

.....Appellant(s)

Versus

1. UNION OF INDIA & ANR.

THROUGH THE GENERAL MANAGER, WEST CENTRAL
RAILWAYS,
JABALPUR,
MADHYA PRADESH

2. THE DIVISIONAL RAILWAY MANAGER

WEST CENTRAL RAILWAYS,
JHANSI
UTTAR PRADESH

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MR. RAJUL SHRIVASTAVA, ADVOCATE

FOR THE RESPONDENT : NEMO

Dated : 02 September 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 22.04.2016 of the State Commission in complaint no. 34 of 2015, whereby the complaint was dismissed.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'complainants') and learned counsel for the respondents (hereinafter referred to as the 'railways') and perused the record.
3. This Commission, vide its order dated 03.08.2016, had condoned the delay of 02 days.
4. The facts, in brief, are that on 18.11.2014, when Ms. Rati Tripathi boarded the train and was travelling on a reserved berth for Ujjain, some unidentified persons boarded the train from Lalitpur and tried to snatch the purse of Ms. Rati Tripathi. When she resisted, she was over-powered and was thrown out of the train. She received severe injuries. She was referred to District Hospital, Sagar from where she was referred to Hamidla Hospital, Bhopal and subsequently admitted in Bansal Hospital, Bhopal. She received serious injuries and remained under critical condition for sufficiently long time. She was discharged from the hospital on 21.02.2015 but she remained completely dependent due to paralysis in her right side of the body. Still she is in paralysed condition and dependent on others for her day to day activities. It is alleged that she was working as an Academic counselor in a reputed company earning Rs. 35,556/- per month. An FIR was lodged with the police and a case under section 394 I.P.C. was registered. Due to gross negligence in duties of the TTE and the staff of the Railways, Ms. Rati Tripathi met with such life threatening serious incident. Hence, the complainants filed a complaint seeking total compensation of Rs. 99,40,000/- before the State Commission.
5. The railways contested the complaint by raising preliminary objection that the complaint is not maintainable before this Commission on the ground that the incident has been registered as an offence under section 394 IPC and the case of the complainants falls under the definition of 'untoward incident' under section 123(c) of the Railways Act, 1989. , therefore, in view of the provisions of Section 124A of the Railways Act, 1989 and the provisions of section 13, 15 and 28 of the Railways Claims Tribunal Act, 1987, the complaint is not maintainable under the Act.
6. The State Commission, vide its order dated 22.04.2016, dismissed the complaint being not maintainable under the Act.
7. Being aggrieved by the impugned order dated 22.04.2016 of the State Commission, the complainant has filed this appeal before this Commission.
8. Before this Commission, learned counsel for the complainants has argued that the although the provisions under the Railways Act 1989 and the Railway Claims Tribunal Act, 1987 lays down an elaborate mechanism for providing compensation in the event of accidents, untoward incidents and allied matters, during the course of the operation, carried out by the Railways but the Consumer Protection Act is a beneficial legislation, specially enacted for the protection of the consumers and provides an additional remedy as per section 3 of the Act and the provisions under the Act cannot be said to be provisions inconsistent with Section 28 of the Railways Act. Therefore, the complaint is maintainable under the Act. In support of this contention, he placed reliance on the decision rendered in the case of **State of Karnataka vs. Vishwabarathi House Building Co-op. Society I** (2003) CPJ 1 (SC).

9. Learned counsel for the railways did not appear at the time of hearing on 08.03.2024 but submitted his written arguments on 03.08.2023. In the written arguments, he has stated that the remedy is available with the Railway Claims Tribunal, therefore, the State Commission has rightly held that the complaint is not maintainable under the Act. He further argued that the complainant had neither furnished any documentary evidence nor produced any witness to substantiate as to how they came to know the sequence of the incident. He further argued that in the absence of any evidence, the appeal is liable to be dismissed.

10. The main issue for our consideration is as to whether the State Commission was right in not entertaining the complaint on the ground that the recourse available to the complainant was with the Railway Claims Tribunal.

11. It is to be noted that the similar issue was decided by this Commission, vide its order dated 18.01.2017, in first appeal no. 451 of 2015 and this Commission after taking into account the relevant provisions of the Railway Claims Tribunal Act, 1987 and the Act, has held as under:

“10. Section 13 (1A) of the Railway Claims Tribunal Act, 1987 says as follows:-

“**Section 13 (1A)** “The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (2A of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder.”

The above Section was included in the said Act by Act 28 of 1994 (Section 9) and made applicable w.e.f. 01.08.1994.

11. Section ‘15’ of the said Act says as follows:-

“**15. Bar of jurisdiction.-** On and from the appointed day, no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in [sub-sections (1) and (1A) of section 13.”

12. Section 28 of the Railway Claims Tribunal Act, 1987 says as follows:-

“**28. Act to have overriding effect.-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

13. Further, Section 124 of the Railways Act, 1989 is reproduced as under:-

“**124. Extent of liability.-** When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act,

neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.—For the purposes of this section "passenger" includes a railway servant on duty.”

14. Section 123(c) of the Act defines the untoward incident as follows:-

“[(c) **“untoward incident”** means—

1. (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.]”

15. Section 124A of the Act provides for giving compensation on account of an untoward incident. On the other hand, the Consumer Protection Act, 1986 (Act no. 68 of 1986), says the following in its preamble:-

“An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matters connected therewith.”

16. Further, Section ‘3’ of the Consumer Protection Act, 1986 says as follows:-

“3. **Act not in derogation of any other law.**- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”

17. A plain reading of the provisions quoted above from the Railways Act, 1989 and the Railway Claims Tribunal Act, 1987 indicates that an elaborate mechanism has been laid down for providing compensation in the event of accidents, untoward incidents

and allied matters, during the course of the operations, carried out by the Railways and for that purpose, the jurisdiction, powers and authority of the Claims Tribunal have been laid down. It is to be determined, however, whether keeping in view the above provisions, the consumer fora shall also have the jurisdiction to deal with the matters, involving railway accidents. The issue has come up for consideration from time to time before the Hon'ble Apex Court and this Commission as well. It has been observed that the Consumer Protection Act is a special legislation, enacted to provide better protection for the interests of consumers in diverse fields. It is true that for specific sectors such as banking, finance, insurance, supply of electricity, entertainment etc., appropriate mechanism has been laid down in the respective statute, to provide suitable relief to the consumers as per requirements. However, the Consumer Protection Act is a beneficial legislation, specially enacted for the protection of the consumers and provides an additional remedy in the shape of Section '3' of the Consumer Protection Act, which clearly lays down that the provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. A harmonious construction of the provisions contained in the Consumer Protection Act and the Railways Act etc. shall indicate that the jurisdiction of the consumer fora cannot be barred, even if the provisions to provide compensation are laid down in the Railway legislation.

19. Based on the discussion above, it is held that the consumer fora do have the jurisdiction to deal with the present case and hence, the consumer complaint cannot be dismissed on the ground of lack of jurisdiction by the consumer fora.”

12. Further reliance is also placed on the decision of the Supreme Court in the case of **Rathi Menon vs. Union of India (2001) 3 SCC 714** wherein it has been held as under:

“**25.** In this context we may look at Section 128(1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 124 or 124-A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation for more than once in respect of the same incident. This means that the party has two alternatives, one is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provision, and the other is to apply before the Claims Tribunal under Section 124 or 124-A of the Act.”

13. In view of the settled legal position, we are of the view that the State Commission was not justified in dismissing the complaint by asking the complainants to approach the Railways Claims Tribunal. Therefore, the order dated 22.04.2016 of the State Commission is liable to be set aside and the matter is liable to be remanded back to the State Commission to decide it afresh on merit.

14. In the result, the appeal is allowed and the order dated 22.4.2016 of the State Commission is set aside and the matter is remanded back to the State Commission to decide

it afresh on merit, in accordance with law, after affording opportunity of hearing to both the parties. All pending I.A.s shall stand disposed of.

15. The parties are directed to appear before the State Commission on 18.11.2024.

16. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel immediately. The Registry is also requested to forthwith communicate this Order to the State Commission by the fastest mode available.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**