

CONSUMER COURTS VIS-A-VIS RAILWAY CLAIMS TRIBUNALS

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1. ABSTRACT

The railway is a public service industry, and public utilities are generally natural monopolies through which products are added or services are essential. Substitution on the part of consumers is as difficult as competition on the part of other producers. Everyone must have water, light, heat, and transportation service. Social welfare depends on public utilities because of the essential nature of their services. Consumer courts are established to deal with these claims. On the other hand, there are so many causes of consequential accidents such as incidental, failure of equipment etc. Passengers who are vulnerable to accidents or become victims of any untoward incident are entitled to compensation. The Railway Administration will be accountable for compensation for the loss of a passenger's death or injury if a dependent of the wounded or slain passenger maintains an action and recovers the damage in connection with it. The consignor, consignee, or endorsee may also make a claim for the loss, destruction, deterioration, or non-delivery of the consignment. This Paper clearly specifies the difference of powers of Consumer courts and Railway Claims Tribunal.

Keywords: Compensation, Services, Accidents, Claims, Consumer Courts, Railway Claims Tribunal.

2. INTRODUCTION

The Railways play a significant part so in this context of numerous kinds of transportation since they offer reasonably quick, affordable, and secure means of transportation. The majority of people need transportation to get from one place to another. Numerous issues are being faced by train travellers. The public expects that the Railways and its workers would operate with the utmost honesty and care. The railroads have a responsibility to offer services such as access to retiring rooms, travel costs, packing services, facilities for the disabled, station cleanliness, and passenger safety relating to the Tatkal booking programme. Due to the rapid change, travellers now demand far more amenities from railways. As a result, one of the Indian Railways' top priorities is to offer passengers better services and amenities as a matter of business policy and social responsibility.

3. CONSUMER COURTS

Consumer Protection Act which was passed in 1986. Consumer courts were established as consumer dispute resolution agencies and they deal with consumer conflicts, disputes and complaints. This point of having a separate forum for consumer disputes was to ensure that such disputes are resolved rapidly and that it was less expensive to create. The Act was applied to all goods and services. It provides for adjudicatory bodies to adjudicate consumer complaints at district, state and national level. The state governments establish in each district one or more consumer dispute redressal forum.

UNDER THE ACT THERE WERE THREE TIERS OF CONSUMER COURTS:

- First tier is District Consumer Dispute Redressal Forum (DCDRF) which operates at a district level and takes on any consumer dispute where the appellants claim for compensation does not exceed 20 lakh rupees.

- Second tier is State Consumer Dispute Redressal Commission (SCDRC) which operates at a state level and takes on any consumer dispute where the appellants claim for compensation does not exceed the amount of Rs. 20 lakhs but does not go beyond 1 crore rupees.
- Third tier is National Consumer Dispute Redressal Commission (NCDRC) which is the apex court and takes on any consumer dispute where the claim for compensation exceeds the amount of 1 crore rupees. From an original decision of the national forum, an appeal lies to the Supreme Court. Orders of these bodies are made enforceable as decrees of a court. Some powers of a civil court have been given to each of these Forums.

But in 2019 this old act repealed. The Consumer Protection Bill, 2019 was approved by the Indian Parliament on August 6, 2019, and later on signed by the President of India. This new act replaced the old Consumer Protection Act, 1986. Under this new act the Central Government established a Central Consumer Protection Council to be known as the Central Council, Every State Government shall establish a State Consumer Protection Council for such State to be known as the State Council. The State Government establishes for every District with a District Consumer Protection Council to be known as the District Council.

3.1 Deficiency in Service

In the context of service, the term "deficiency" is employed. Complaints for relief can be brought to the competent authority established under the Consumer Protection Act, 2019 in circumstances of deficiency in service, adoption of unfair trade practices, restrictive trade practices, and negligence on the part of railway authorities. Deficiency refers to any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance that is required to be maintained by or under any law currently in force or that has been undertaken to be performed by a person in accordance with a contract or otherwise in relation to any service and also includes

- Any act of negligence or omission or commission by such person, which causes loss or injury to the consumer, and
- Deliberate withholding of relevant information by such person to the consumer

There have been numerous incidents where passengers have died as a result of the railways' negligence such as. Banking, financing, insurance, transportation, processing, the delivery of electrical or other energy, board or loading or both, home building, entertainment, amusement, or the dissemination of news or other information are all examples of service deficiencies. Petition was filed against the deficiency on the part of the railways. The petitioner complained that he booked six railway berths from Ratlam to Raipur and had to change the train in Bhopal. He had a reservation. He said that when he boarded a train in Bhopal for a further journey to Raipur, there was no reserved berth for him. Later, he had to board another train to complete his journey. It is also alleged that the ticket had boarded that particular train at the behest of the collector. But he had to pay extra money and the TTE also abused him.

The complaint was dismissed by the District Forum on the ground that jurisdiction is with the Railway Claims Tribunal. However, on appeal, the State Commission acknowledged that there was a shortfall in service and that the district forum had jurisdiction in the matter and was given an amount of Rs. 1,000 as compensation and Rs. 500 as cost. But, at the same time, the State Commission also directed a refund of Rs.312/- taken as extra fare from the appellant. State Commission held that since appeal did not lie against the second order of the

District Forum it took *suo moto* action on the first complaint which was dismissed on 12.9.1994 and it treated that as revision though it was quite barred by limitation.

- ❖ The Railway Coach Attended has performed the duties when Train is in motion was held in case of Ambreesh K. Kagzi, Bombay v. The General Manager, Western Railways, Bombay

These Duties are as follows

- Helping ticket checking staff in checking passenger's tickets.
- Assisting passengers in arranging food.
- Locking the compartment securely when the train is in motion and the vestibule doors at night.
- Attending to minor electrical/mechanical faults and calling in maintenance staff to attend to major repairs.
- Arranging supply of Bed rolls.
- Ensuring that all internal fittings of the coach are in working order.
- Assisting the conductor in accommodating passengers boarding en route.
- Preventing entry of unauthorized persons in the coach.
- Ensuring that bathrooms/compartments are cleaned regularly.
- To conduct check if passengers carrying inflammable articles in the coaches provided. If such goods are detected he shall bring it to the notice of the ticket checking staff on the train.

An appeal was filed before the State Commission. The State Commission was allowed the appeal and directed to pay compensation of Rs. 10,000/- with cost of Rs. 1,000/-. Against this order present Revision Petition is filed. It was mentioned by the State Commission that every railways passenger is a consumer in terms of Section 3 of the Consumer Protection Act (in short the 'Act'). Jurisdiction of the Consumer Fora is not ousted in such matter for the loss of luggage is not covered by section 13 of the Railways Claims Tribunal Act, 1987. the State Commission has just awarded Rs. 10,000/- for stolen the suitcase and other contents and as well as for harassment and mental agony with cost of Rs. 1,000/-. The compensation is not on higher side. In view of the aforesaid discussion, no force found in this revision petition and the same is dismissed. Order of State Commission restored. Whenever there is any fault, shortcoming in the quality or nature, inadequacy, or manner of performance to provide the transport service then there is said to be deficiency in service.

- In Another case Railways Passengers travelling by train on payment of prescribed fare are consumers and the facility of transportation provided by railways is a service defined under CPA. The lack of service includes non-working fans, no water in toilets, cancellation of confirmed reservations to accommodate VIPs, injuries due to rusty nails, loss of passengers' luggage in reserved compartments, inadequate safety and safety measures by railways, shortage of pantry car in super-fast trains, failure to prevent theft and dacoity, cushioned seats, maintenance of compartments, failure to communicate reservation details etc.
- In a case where death occurs due to the carelessness on the part of the passenger, then the railways could not be made liable for deficiency in service since the death has

occurred not because of the accident of the train or negligence on the part of the railway department but due to the negligence on the part of the passenger. In such a case a Complainant cannot approach the Railway Tribunal or Consumer Forum.

Whenever deficiency in service arises the concept of remedy comes into existence. A consumer can approach the Consumer Fora and seek relief. Reimbursement of charges paid, compensation for the loss of goods or passenger in transit and even interest for the charges are some of the remedies provided in the Consumer Fora. Even punitive damages are also provided. In case of railways the damages due to an accident could be claimed under the Railway Claims Tribunal. But whenever deficiency in service occurs as to transport of goods, remedies can be got in the Consumer Fora and the liability is limited.

The liability is restricted to the extent printed on the tickets in case of airways. The CPA is in addition to and not in derogation of any other law. When an accident occurs on the platform, footpaths, over bridges for ingress and egress from train then such type of accidents is not covered in the Railways Act or Railway Claims Tribunal Act. For such type of remedy Consumer Fora can be approached. The remedy in CPA is in addition to and not in derogation of any other law and Fora can exercise if there is no specific bar.

4. RAILWAY CLAIMS TRIBUNAL

The Indian Railway Act was enacted and passed by the British Parliament in 1890. The law was intended to address a variety of railway-related issues. Post-independence, it was believed that in order to meet the demands of the people, the Act should undertake some modifications. The Railway Claims Tribunal Act, 1987 was enacted to expedite settlement of claims against the railway administration. Not only for the damage and loss caused to the owners who assigned their goods to the train but also for passengers who suffered in accidents or got injuries at large. In case the claimant is not satisfied with the relief provided by the Railways, he can seek legal remedy through the Railway Claims Tribunal, which has been set up under the Railway Claims Tribunal Act, 1987 which came into force from 8th November 1989. Presently there are 23 benches including Principal Bench of Railway Claims Tribunal all over the India

The Railway Act, 1989, therefore was amended vide the Railway (Amendment) Act 1994 whereby a new section 124A was inserted in the Railways Act, 1989 and 124B section was inserted with the Railway (Amendment) Act, 2014. This section added the liability of the railways for the untoward incidents: Terrorist Attack or Dacoity or Rioting, violent attack or the commission of robbery, shoot-out or arson by any person in or on any train carrying passengers, or cloak room or reservation or booking office in a waiting hall, or on any platform or in any other place within the premises of a railway station ; or the accidental falling of any passenger from a train carrying passengers if accident occurs due to any of the above reason the Claims Tribunal inquires and determines claims against the railway administration for: Refund of fares or freight and compensation for death or injury to passengers occurred in railway accidents.

However the Consumer Forums are created under the Consumer Protection Act, 1986 will have no jurisdiction to hear the case over which the Railways Tribunal have jurisdiction. Under the Indian Railway Act, a passenger can file for loss, destruction, damage, non-delivery or deterioration of goods entrusted to them for carriage and for death or injury or loss etc., to a passenger in a railway accident against the railway administration. A specialized tribunal had been established for speedy adjudication of such claims. The tribunals which had been established for speedy disposal of disputes can be sought for settlement relating to refund of fares and freight charges, for payment of compensation to the

victims of rail accidents, for non-delivery of goods or animals entrusted to it to be carried and to those whose goods are lost or damaged in rail transit.

The Scale of Compensation is to be decided according to the Railway Accident and Untoward Incidents (Compensation) Rules, 1990. These rules were made by the Central Government in exercise of the powers conferred on it by Section 129 of the Act. Rule 3(1) says that the amount of compensation payable in respect of death or injuries shall be as specified in the Schedule. The Rules as well as the Schedule were amended with effect from 1.11.1997. After 19 years Ministry of railways amended the railway accidents compensation rules and passed the new rules called the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016. It came in to force 1st January 2017.

Ex-gratia compensation is paid only to the dependents in the cases death of the person or employee concerned occurred in the actual performance of a bonafide official duties. Amount of ex-gratia is only given in case of train accidents/ untoward incidents. So the ex- gratia is the immediate cost and it is not taken into account at the time of final disposal of compensation claims. These orders are applicable to the railway employee who dies in harness on or after January 1, 2016

5. JURISDICTION OF CONSUMER COURTS AND RAILWAY CLAIMS TRIBUNALS IN RELATION TO THE CASES ARISING OUT AGAINST THE RAILWAYS

There are distribution of the powers of Consumer Courts and the Railway Claims Tribunal. If person aggrieved from the deficiencies in services of railways then that person can apply to the consumer court on the other hand if person got injured or died with an accident of untoward incident than he can approach to the claims tribunal for the compensation against the order of the railways authorities.

Types of Claims Against Railway Authorities in Consumer Courts	Types of Claims Against Railway Authorities in Railway Claims Tribunal
Compensation Claims for Deficiency in Services such as Water, Sanitation, Cleanliness, Catering, Reservation, Off or On Board Passengers Amenities, lightening, Refund of Tickets, foot-over-bridges, Waiting rooms, retiring rooms, seating arrangements etc.	Compensation Claims For Death or Injury with an Accident or Untoward Incident, Loss, Damage, Destruction, Deterioration or Non-Delivery of Animals or Goods, Refund of Fare and Freight
High Court	High Court
Supreme Court	Supreme Court

- In a case of “*Chairman, Thiruvalluvar Transport Corporation vs Consumer Protection Council*, a person was travelling in the omnibus concerned sustained a serious head injury and ultimately succumbed to such injury owing to certain application of brakes by the driver of the said omnibus. SC held that the accident that occurred had nothing to do with the services provided to the deceased and that the complaint in the said case could not be said to be in relation to any services hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him; the fatal injury was the direct result of the accident; So, consumer forums are not having the jurisdiction to hear such claims.”

- *General Manager, Eastern Railway, Kolkata & Ors vs. Shri Apurba Konar*, A passenger who opted to cross the railway track to reach the platform to catch his train fell and suffered leg injuries. The district consumer forum accepted the case and ruled that the railway must compensate the affected individual. However, The Kolkata High Court ruled that the district consumer forum lacked authority to hear such allegations. There is no deficit in service in this instance, and the RCT has the exclusive jurisdiction to consider railway accident claims
- In *Sumatidevi M. Dhanwatay vs Union of India (UOI) and Ors MANU/SC/0342/2004*, the Supreme Court held that inadequate security for passengers constitutes a deficiency in service, and the consumer forum had jurisdiction to settle the matter. A passenger lost valuables, including jewels and pearls, after several people entered the train compartment and attacked them. The state awarded compensation to the passenger, but the national commission overruled the decision.

6. CONCLUSION

The RCT Act had a great objective, but it also created a barrier to consumers by limiting jurisdiction in other courts and forums. The RCT Act stripped consumers of their right to remedy. Indirectly blocked claim before consumer forums, placing customers in a pitiful predicament. The goal of the consumer protection act's enactment will be defeated if the government decides to transfer each group of disputes to a different forum (such as the railway claims disputes-RCT). Consumer forums can resolve complaints between railway users and authorities over "deficiency in service". The Railway Claims Tribunal has jurisdiction to consider claims filed against the railway by consumers and users.

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