

**STATE CONSUMER DISPUTE REDRESSAL COMMISSION
BIHAR, PATNA**

Appeal No. 496 of 2009

1. The Chairman, Railway Board, New Delhi.
2. The General Manager, East Central Railway, Hazipur, District-Vaishali.
3. Divisional Rail Manager, Samastipur Division, Samastipur

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Appellants

Versus

- Premshila Devi wife of Late Keshav Das
2. Nischay Kumar son of Late Keshav Das
 3. Ankita Kumari daughter of Keshav Das
 4. Anisha Kumari daughter of Keshav Das
- All residents of Siswa Patna, P.O- Siswa Patna, P.S- Kesaria, District-Motihari (East Champaran)

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Respondents

For the Appellant : F.R.Malik, Advocate
For the respondent : Dr. Chandra Shekhar Azad, Advocate

Before,

**Hon'ble Mr. Justice Sanjay Kumar, President
Mr. Ram Prawesh Das, Member
Md. Shamim Akhtar, Member**

Order

**Per: Hon'ble Mr. Justice Sanjay Kumar, President
Dated 16.11.2023**

Present appeal has been filed on behalf of the Appellant/opposite party for setting aside the order dated 14.10.2009 passed by District Consumer Forum, Motihari passed in complaint case no. 63 of 2008 whereby and where under appellants have been directed to pay compensation of Rs. 5,00,000/- to the complainant and further to pay Rs. 2,000/- as cost of litigation.

Briefly stated the facts of the case is that complainant Keshew Das and Rakesh Ranjan who are father and son after purchasing railway ticket boarded Sonpur Gorakhpur passenger train no. 407 from Gorakhpur for Motihari station.

At about 12 in mid night when the train reached Balmikinagar station 5 to 6 robbers entered into the compartment and started robbing passengers of their valuables and when it was protested by the complainants a Lathi blow was given on the head of respondent no; 1 and a shot was fired at abdomen of respondent no. 2 and as train reached Siswa railway station robbers fled away and station master was informed about the robbery in the train and first aid was provided by the station master and GRP and by next train they reached Gorakhpur and received treatment at Sadar Hospital Gorakhpur from where they were referred to medical college hospital Gorakhpur. However, when the condition of respondent no. 2 became serious he was referred to all India Institute of Medical Sciences, New Delhi but he could not be admitted their due to waiting list of patients, as such he was admitted to Indian spinal injuries centre, Basantkunj, New Delhi where he was operated on 02.06.2008 but could not recover and was unable to perform his daily routine and even needed help for going to toilet. Complainants had to incur huge expenses in

medical treatment. An FIR under section 395 and 397 of IPC was lodged on 20.05.2008 at GRP station Gorakhpur.

Complainants filed a consumer complaint case in the District Consumer Forum, Motihari East Champaran as railways failed to protect life and property of complainants and failure of which amounts deficiency in service of railway and claimed compensation of Rs. 15,00,000/- as injury caused by robbers while travelling on a train resulted in permanent disablement of complainant no. 2. Notices were issued to opposite party and they appeared and filed their written statement.

In their written statement opposite parties stated that consumer forum has no jurisdiction to entertain present case and claim is to be decided by railway claims tribunal constituted under section 125 and 126 of the Railways Act. It was further contended that providing security to passengers is duty of GRP and not railways as law and order is subject matter of State Government. It is further stated that safety and security of passengers is not responsibility of railways but of state police who are posted at railway stations as GRP. The compensation against railways can be claimed in case of any death or injury sustained by any passenger due to any accident taking place due to fault or negligence of railways.

The District Consumer Forum after hearing the parties and considering the materials placed on record held that consumer court had territorial jurisdiction to try the complaint case and consumer courts have been established in addition to remedy available under Railway Claim Tribunal and held that complainant had to incur Rs. 28,000/- as medical expenses in Gorakhpur and Rs. 4,48,000/- in Delhi. Complainant has suffered 100% disability which has been certified by the competent authority and complainant appeared before

the forum by assistance of another persons and forum found that complainant requires assistance and help of another persons for his remaining life and accordingly found deficiency in service by the railways and awarded compensation of Rs. 5,00,000/- to the complainant as well as Rs. 2,000/- as cost of litigation aggrieved by which appellants/railways have filed this appeal before the State Commission.

Nothing new has been argued on behalf of the counsel for the appellant and submissions made before the District Consumer Forum has been reiterated by the counsel for the appellant. The main contention of appellant is jurisdiction of consumer Fora to try such matters.

Heard the parties.

Section 123 (C) of railway Act 1989 defines untoward incident and compensation on account of any untoward incident is dealt with under section 124A of Railways Act

Section 123 (C) of the Act defines the untoward incident as follows:- "untoward incident" means-

- (1) (i) ****
- (ii) the making of a violent attack or the commission of robbery or dacoity; or
- (iii) ***

"124-A Compensation on account of untoward incident:- when in the course of working a railway an untoward incident occurs, then whether or nor 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 the dependent of a passenger who has been killed 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, or injury to, a passenger as a result of such untoward incident.

Consumer Protection Act is a special legislation enacted to provide better protection for the interest of consumers in diverse fields. Consumer Protection is a beneficiary legislation and provides additional remedy in shape of section 3 of consumer Protection Act which provides that provisions of the act is in addition to and not in derogation of any other law for the time being in force. Jurisdiction of the consumer forum cannot be barred even if the provisions to provide compensation are available under the Railway Act.

Complainants were bonafide passengers and had boarded the train after purchasing the valid railway ticket and were travelling in the train when some robbers entered the train and started looting the passengers and on protest made by complainants they assaulted the complainants and also shot complainant no. 2 as a result of which he became permanently disabled.

Railways in their written statement have no where denied the occurrence of robbery in the train or complainants not being bonafide passengers travelling in the train and were not injured during robbery made in the compartment while travelling on train.

The occurrence of robbery in a train is an untoward incidence as defined under section 123(C) of Railway Act in which complainant suffered grievous injury as result of which complainant became permanent disabled. Railways has not disputed the disability certificate produced before the District Consumer Forum by the complainant. The District Consumer Forum had occasion to see complainant no. 2 and found that he was not able to walk without

assistance of other person and only thereafter passed the order for grant of compensation. Railways no where have challenged the quantum of compensation granted by District Consumer Forum. The compensation granted is almost in tune with Railway accident and untoward incidents (compensation) Rules 1990.

The consumer complaint case was filed in the year 2008 and judgment was passed on 14.10.2009 and appeal was also filed in 2009 however same remained pending before the State Commission for one reason or the other and during pendency of appeal both complainants died who were substituted by their legal heirs and representatives.

Under such circumstances this commission is not inclined to interfere in the order passed by the District Consumer Forum accordingly this appeal is dismissed.

A copy of this order be supplied to both the parties free of cost as mandated by the Consumer Protection Act.

Office is directed to upload this order on the website of the Commission.

Let the file be consigned in the record room along with copy of this order.

