

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1099 OF 2020

(Against the Order dated 14/09/2020 in Appeal No. 935/2019 of the State Commission
Rajasthan)

1. INDIAN RAILWAY & 2 ORS.Petitioner(s)

Versus

1. UMA AGARWALRespondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. SUBHASH TANWAR, ADVOCATE
MR. SANDEEP MISHRA, ADVOCATE

FOR THE RESPONDENT : MR. AVNISH DAVE, ADVOCATE
MS. ARCHANA P DAVE, ADVOCATE
MR. AADHAR SAHA, ADVOCATE

Dated : 25 July 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioners against Respondent as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 14.09.2020 of the State Consumer Disputes Redressal Commission Rajasthan (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 935 of 2019 in which order dated 08.08.2019 of District Consumer Disputes Redressal Commission Bikaner hereinafter referred to as District Commission) in Consumer Complaint (CC) no 47 of 2018 was challenged, inter alia praying for setting aside the order dated 14.09.2020 of the State Commission and order dated 08.08.2019 of the District Forum.

2. While the Revision Petitioners (hereinafter also referred to as OPs) were Appellants and the Respondent (hereinafter also referred to as Complainant) was Respondent in the said FA No. 935 of 2019 before the State Commission, the Revision Petitioner were Opposite Parties and Respondent was complainant before the District Forum in the CC no 47 of 2018.

3. Notice was issued to the Respondent(s) on 17.05.2021. Both the Parties filed Written Arguments/Synopsis on 06.07.2023.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that respondent on 07.09.2016 boarded

Sarai Rohila Superfast Express Train from Bikaner to Delhi at 10.30 p.m. and seat no.13 in A-1 coach (IInd AC) was allotted to her. On 08.09.2016 at about 4.45 a.m when the train left Rewari Railway Station some unknown person snatched her purse which contained cash amount of Rs.15,000/-, gold necklace, gold chain, silver coins, pearl necklace, ring and ear rings. When she tried to chase the unknown person, another person who was sitting at the lower berth seat behind the curtain caught her by twisting her hands who was almost wearing of the uniform of train attendant. The complainant could not see his face as he was sitting behind the curtain. Before complainant could understand the situation, the thief succeeded in jumping the running train with her purse. Even the person who was sitting behind the curtain also disappeared. According to the complainant at the time of incident all the four doors of the coach were open along with small door in the AC coach. It is further submitted by the complainant that at the time of incident neither any attendant , TT or security guard was present in the coach. After the incident, the complainant somehow got stopped the train by pulling the chain but even after 15 minutes of stopping of the train, no train attendant, guard or security officer reached in the coach. Zero FIR was got registered by the complainant and same was transferred to G.R.P. Rewari. As per the complainant, no effective steps were taken by the Police Station Rewari nor any articles have been recovered. It is alleged by the complainant that act of the opposite party amounts to deficiency in service. The complainant filed CC before the District Forum which allowed the complaint in her favour. Aggrieved by the decision of the District Forum, the Opposite Parties – Railway filed Appeal before the State Commission which was dismissed. Hence the Opposite Parties – Railway is before this Commission now in the present Revision Petition.

5. Vide Order dated 08.08.2019 in the CC no. 47 of 2018, the District Forum has allowed the complaint and directed the opposite party to pay Rs.4,00,000/- which is the value of the stolen goods along with interest @ 9% per annum from 31.01.2018, Rs.50,000/- towards mental and physical harassment and Rs.10,000/- towards litigation expenses.

6. Aggrieved by the said Order dated 08.08.2019 of District Forum, Petitioners appealed in State Commission and the State Commission vide order dated 14.09.2020 in FA No.935 of 2019 dismissed the Appeal of the Petitioners.

7. Petitioner(s) have challenged the said Order dated 08.08.2019 of the State Commission mainly/inter alia on following grounds:

- i. The order passed by the Fora below are erroneous, factually wrong and suffers with illegality and material irregularity and without proper appreciation of facts and law.

- ii. The complaint has been wrongly filed before the District Forum Bikaner where no cause of action of theft of purse had occurred and, therefore, District Forum had no territorial jurisdiction to entertain the complaint and therefore there is lack of jurisdiction.
- iii. The onus of the security with regard to goods in the railway coaches is on the passengers.
- iv. In spite of other passengers who were performing their journey with the respondent, she did not seek their assistance in catching the thief.
- v. Mere a claim for missing or theft of luggage during the journey in the reserved coach will not make Railway liable until it is proved that there is deficiency on their part.
- vi. The onus of proof the negligence on the part of the Railway lies on the passenger who alleges it .
- vii. The jurisdiction of the Consumer Forum is barred because the matter pertaining to the thefts is specifically barred by Section 97 and 100 of the Railways Act, 1989.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

8.1. Counsel for the Petitioner repeated the points which are stated in para 7, grounds for challenging the order of the State Commission, hence the same are not being repeated here.

8.2 Counsel for the respondent argued that both District Forum and State Commission have given concurrent findings regarding deficiency in service committed by the Railways and counsel has relied upon the judgment of Hon'ble Supreme Court in **Rajiv Shukla Vs. Gold Rush Sales and Services Ltd.** (2022) 9 SCC 31 : (2022) 4 SCC (Civ) 583 : 2022 SCC Online SC 1185 in respect of revisional jurisdiction. Counsel has contended that Petitioner was negligent in providing safety and security to its passengers as doors of the

train were left unattended and they were supposed to keep of the gates of train closed during night and also to keep vigil. Counsel has also relied on the judgment of this Commission in **Union of India Vs. Ajay Kumar Agarwalla** 2015 SCC Online NCDRC 2956, **General Manager, South Central Railway V. Jagannath Mohan Shinde** 2012 SCC Online Ncdrc 183 and submitted that Petitioner in Ajay Kumar Agarwalla (supra) was held negligent and in General Mager, South Central Railway, it was held that Petitioner cannot take recourse of Section 100 of the Indian Railway Act. Counsel further argued that it is the duty of the Railway to ensure safety and security of a passenger who is travelling in reserved berth and has relied on the order of this Commission in **Station Master, Indian Railways Vs. Sunil Kumar** 2018 SCC Online NCDRC

9. We have carefully gone through the facts and circumstances of the case, rival contentions of the parties, orders of the State Commission and District Forum and other relevant records. There is no merit in the contention of the Petitioner that incident is not covered under the jurisdiction of Consumer Protection Act and that issue is covered under Indian Penal Code and Railway Claim Tribunal Act, as remedies under Consumer Protection Act are in addition to remedies under other Statutes. It was held by Hon'ble Supreme Court in **Imperia Structures Ltd Vs Anil Patni and Anr** (2020)10 SCC 783 that "*Remedies under the Consumer Protection Act are in addition to the remedies under special statutes*". Petitioner has relied upon judgment of Hon'ble Supreme Court in **Station Superintendent & Anr. Vs. Surender Bhola** (Civil Appeal No. 7116 of 2017) decided on 15.06.2023 in which Hon'ble Supreme Court held that "*We fail to understand as to how the theft could said to be in a way a deficiency in service by the railways. If the passenger is not able to protect his own belongings, the railways cannot be held responsible*". Petitioner argued that this judgment clearly states that the onus of security of belongings of the passenger in railway coaches is on the passenger themselves and not on the railways.

10. As held by Hon'ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269] that the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577] held that "*the revisional jurisdiction of the National Commission under [Section 21\(b\)](#) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity.*" In **Rajiv Shukla V. Gold Rush Sales & Services Ltd.** (supra), Hon'ble Supreme Court held that "*In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order (Gold Rush Sales and Services Ltd. Vs. Rajiv Shukla, 2016 SCC Online NCDRC 702) the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under section 21 (b) of the Consumer Protection Act.*"

11. Respondent has relied on office letter No. 98/TG-V/12/3 dated 11.09.1998 of the Petitioner / Railways, which prescribe certain duties of train conductor in Ist AC, 2nd AC, 3rd AC and Ist class coaches, some of which are listed below:

5. *He shall check the tickets of the passengers in the coach and guide the passengers in occupying their accommodation. He prevents illegal / unauthorized entry in the coach including the platform ticket holders.*

11. *He 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.*

12. *He shall keep the end doors of the vestibule coach locked during 22.00 hrs. to 06.00 hrs to prevent unauthorized entry.*

13. *He shall remain vigilant particularly during the night time and prevent entry of unauthorized persons / beggars / intruders in the coach.*

17. *He shall be present in the allotted coach during duty hours and if more than one coach are to be manned, give frequent visits to all the coaches to be manned.*

19. *He shall attend to any complaint of theft / loss of passenger belongings and lodged the first information report with the GRP in the prescribed format to enable the passenger to continue the journey.*

20. *He shall carry blank FIR forms for making them available to the passengers in case of any incident of theft of luggage etc. Such forms duly filled in the handed over to the next GRP Post at the scheduled stoppage for further action in the matter.*

12. Relying on above, the respondent contended that the railway personnel who were supposed to be in the coach have violated several of their duties which have been prescribed by the Railway Board by not closing the gates at night, not being present in the coach, allowing intruders in the coach, not aiding the respondent in filing the FIR among others. Hence, as they have failed in their duty, they were negligent in providing the requisite

service to their consumers and the respondent herein. Thus, the Railways is liable for deficiency of service on account of negligence of its employees.

13. In **Union of India Vs. Ajay Kumar Agarwalla** (supra), this Commission held that “ *TTE of coach was negligent in performance of his duties by not keeping the doors of the coach latched when the train was on the move and by not keeping the vestibules doors of coach locked from 10 p.m. to 6 p.m.*” Relying on this case, respondent contends that present case also warrants of the same circumstances where the doors of the coach were left open. Hence, it was a negligent act on the part of the TTE and the revisionists are liable to pay the compensation. In **General Manager, South Central Railways Vs. Jagannath Mohan Shinde** (supra), this Commission held that “ *If any unauthorized person is permitted to be present on the reserved compartment of a train, then Section 100 of the Indian Railways Act would not be of any help to the Railways in absolving them from any liability since anyways the Railways is responsible as a carrier of luggage if it is proved that there was negligence on its part.*” Relying on this judgment, the respondent argued that the contention of the revisionists that the Id. Consumer Commissions do not have jurisdiction in matters covered Section 100 of the Act, stands invalidated. In **G.M. South Central Railway Vs. R.V. Kumar 2005 SCC Online NCDRC 222**, this Commission observed that “ *A passenger travelling by a train is entitled to carry certain baggage or luggage within permissible limits of weights, free of cost. There is no question of entrusting such baggage / luggage to the Railways and getting a receipt thereof. If a loss take place of such a luggage, Railways can be held responsible provided that there is negligence on the part of the Railways or any of its servants, provided, of course, that the passenger himself has taken responsible care of his personal baggage as expected of a prudent person.*” The respondent argued that in the present case, the respondent has taken more than reasonable care by keeping the purse beneath her pillow while sleeping. Moreover she tried her best to stop the snatching of her belongings and despite being a female bravely tried to catch hold of the intruder herself but was stopped by person who was supposedly railway staff as appeared from his uniform/appearance. Railway officials by keeping the doors of the coach open and by allowing an unauthorized person to enter the coach have failed to perform their duty which point towards their negligence thus causing a deficiency in service. In **Station Master, Indian Railways V s. Sunil Kumar** (supra), this Commission observed that “ *We further note that the complainant was travelling with ladies (mother and wife) and children on reserved berths in a reserved coach after paying the fares and purchasing the tickets. He was right in agitating that the railways was responsible for safety and security of person and hand-held baggage, including from unknown persons who gained entry unauthorizedly and committed theft (the railways was undoubtedly responsible for theft of hand-held baggage from running train).*” Respondent argued that in the present case, theft occurred under similar circumstances as the respondent’s belongings were stolen by unauthorized persons in a reserved coach, therefore, the Railways are liable to pay compensation to the respondents.

14. Petitioner argued that jurisdiction of Consumer Fora is barred because matters pertaining to the theft is specifically barred by Section 97 and 100 of the Railways Act, extract of which is reproduced below:

“Section 97 : Goods carried at owner’s risk rate – Notwithstanding anything contained in Section 93, a railway administration shall not be responsible for any loss, destruction, damages, deterioration or non delivery in transit, of any consignment carried at owner’s risk rate, from whatever cause arising except upon proof, that such loss, destruction, damage, deterioration or non delivery was due to negligence or misconduct on its part or on the part of any of its servants.”

Section 100. Responsibility as carrier of luggage.—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 given a receipt therefore and in the case of luggage which is carried by the passenger in his charge, unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on the part of any of its servant.”

A bare perusal of above provisions show that under section 100, if it is proved that loss, destruction, damage or deterioration was due to negligence or misconduct on the part of railways or on the part of any of its servant, the railways administration will be held responsible. In this case both the fora below have given concurrent findings regarding negligence / deficiency of service on the part of petitioner railways / its officials. Hence, agreeing with the contentions of the respondent, we do not find any infirmity or illegality material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld.

15. As regards contention of the Petitioner regarding territorial jurisdiction of the District Forum, Section 11 of the Consumer Protection Act, 1986, states as follows :

“11. Jurisdiction of the District Forum.—

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed [does not exceed rupees twenty lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily

resides or [carries on business or has a branch office or] personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [carries on business or has a branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or [carry on business or have a branch office], or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

As Railways have a Pan India presence, and the boarding point / starting point of journey by the respondent was Bikaner, District Forum Bikaner was right in entertaining the Consumer Complaint.

16. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised and case laws by the learned Counsel for the Parties, we find no merit in the Revision Petition, hence the same is dismissed.

17. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER