

# Important judgements passed by the Consumer Courts

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**"It is the responsibility of the Railways to prevent the entry of unauthorised persons in the reserved sleeper coaches"**

**National Consumer Disputes Redressal Commission, New Delhi**  
**Revision Petition No. 1590/2000**

(From the order dated 13.7.1999 in Appeal No. 410/1996 of the State Commission, Gujarat)

Union of India & Ors. ----- Petitioners  
Vs.  
Sanjiv Dilsukhrai Dave & Anr. ----- Respondent

**Before:** Hon'ble Mr. Justice D.P.Wadhwa, President, Mrs. Rajyalakshmi Rao, Member, Mr. B.K.Taimni, Member.

## **ORDER**

### **Mrs. Rajyalakshmi Rao, Member.**

1. The Revision Petition is preferred by the Petitioner, Western Railways, against the order dated 13th July, 1999 passed by the State Commission, Gujarat, in Appeal No. 410/96 arising out of the complaint No. 81/93. The District Forum had directed the Opposite Party/Petitioner to pay Rs.15,000/- with interest at the rate of 18% p.a. and costs to the present Respondent, which, on appeal was upheld by the State Commission. The brief facts of the case:

2. The Respondents, Shri Sanjay Dilsukhrai Dave and Smt. Rupaben Sanjiv Dave, were travelling in S/3 reserved sleeper class in Girnar Express, Train No. 9945 on 24.2.1993 which was coming from Junagadh to Ahmedabad. They put their luggage bags below their berth Nos. 13 and 16 respectively and they were asleep. On the early morning of 25.2.1993 around 4.00 a.m. between Dandhuka and Dholka stations some unknown miscreants entered the compartments and lifted one of the bags and ran away. The Respondents aver that the conductor is under a duty to restrain unauthorised persons entering the compartment without any reservation. The Conductor was not even present which facilitated unauthorised entry and theft. In this case they contended that there was deficiency in service on the part of the Western Railways, the Complainants suffered a loss of Rs.50,150/- which was the value of clothes and ornaments contained in the bag that was stolen.

3. District Forum returned the finding that there was deficiency in service on the part of the present Petitioner and allowed the complaint and awarded Rs.15,000/- by way of damages for pain, tension and loss of valuable ornaments along with interest at the rate

of 18% p.a. and costs of Rs.1,000/-. State Commission in the appeal filed by the Petitioner affirmed the same view of the District Forum and maintained the said order. The Petitioners were not present in the State Commission at the time of final hearing and raised an issue before us that the case was taken up in their absence and they were not aware of the said date of final hearing. In the present petition they have reiterated all the arguments which were placed in the District Forum and prayed for allowing the Revision Petition and dismiss the complaint with costs.

4. They further stated that as a matter of fact, in accordance with Rule No. 506.2 of Indian Railway Conference Association (IRCA) No. 24, No. 216, the passenger is to take care of his own luggage and articles carried out by him which are in his possession and only he is responsible. It is also stated that under Rule 1301(I)(IV) of IRCA No. 24, the passenger is supposed to declare before the starting station and get any valuable articles insured by paying the necessary charges for the railway administration taking extra precautions. The articles were not entrusted in this case to the Railways for carriage by payment of necessary charges. The said articles were not declared by the Respondent before the starting station. In the absence of the same information the Railways at the station is not liable to pay any compensation for the Complainant. The word 'luggage' has been defined in the Railways Act. The 'responsibility of the railways to carry the luggage' is also defined in the said Act. Since the luggage was not booked with Railways and this is not entrusted to the Railways, the Railways is not liable to pay.

5. The final contention of the Petitioner is that the consumer fora have no jurisdiction to entertain the complaint relating to loss, damages, destruction of goods carried by trains, in view of Sections 13 and 15 of the Railway Claims Tribunal Act, 1987.

6. The Respondents challenged each of these arguments and relied extensively on the provisions of the Railway Claims Tribunals Act and the case law under the Consumer Protection Act. The main issues for decision, therefore, are:

*(i) whether the claim of the Respondents under the Consumer Protection Act is barred because of sections 13 and 15 of the Railway Claims Tribunal Act, 1987? and*

*(ii) whether there is negligence on the part of the Railway Administration in providing measures whereby removal of luggage by an intruder became possible?*

7. As regards the first issue, the Respondents relied on the judgment of this Commission in the case of Deputy Chief Commercial Manager, Eastern Railways & Anr. vs. Dr. K.K.Sharma & Ors., [2000 (III) CPJ page 1 (NC)]. The gist of the judgment is that "existence of remedy provided by Sections 13 and 15 of the Railway Claims Tribunal Act, 1987 did not take away the jurisdiction of the consumer courts to decided the question of deficiency of service. The consumer courts cannot sub-plant the jurisdiction of the Railway Tribunals or any other judicial or quasi judicial body but can supplement the jurisdiction of these bodies in appropriate cases. It provides an additional remedy to a consumer".

8. Under the Railways Act, 1989, "goods" and "luggage" are two different things defined separately under Clauses (19) and (23) respectively of Section 2 of the said Act. A plain reading of these clauses show that the word "luggage" means baggage carrying personal belongings of passengers. Further "luggage" can be either carried by

passenger himself or entrusted to the railway administration for carriage. "Goods" means containers, pallets or some articles of transport used to consolidate goods and animals. It appears that "goods" connotes material in the nature of merchandise and does not include personal effects or provisions under Section 13(1)(a) of the Railway Claims Tribunal Act. The Tribunal has jurisdiction to try disputes relating to the responsibility of railway administration as carrier in respect of claims of compensation for loss, destruction, damage or non-delivery of animals or goods entrusted to the railway administration carried by railways. The words used by the Legislature in Sec.13(1)(a)(i) are "goods" and has expressly and specifically included "luggage". Thus, under the above section, the Railway Claims Tribunal has jurisdiction to try and entertain the claim for loss etc. only of "goods entrusted" to railway administration for carriage by the railways. In the present case, luggage was carried by the Respondents themselves and was not entrusted to the railway administration for carriage by the railways. Hence, in the absence of "entrustment" of luggage, the Railway Claims Tribunal has no jurisdiction to try and entertain the dispute involved in the present case.

9. Sec.15 of the above Act bars the jurisdiction of the other courts, as regards claims falling under Sec.13 of the Act. The language of Sec.13 dealing with the jurisdiction of the claims tribunal is explained and unambiguous and since the present case of loss of luggage is not covered by Sec.13, the question of any barring of jurisdiction of general courts under Sec.15 of the RCT Act does not arise.

10. As regards the issue of negligence of the railway administration, a list of duties prescribed by railway administration "TTE for Sleeper Coaches" is brought on record. Of these, duties prescribed at Sl. No. 4, 14, 16 and 17 are very relevant. These read as follows:

*"4. He shall check the tickets of the passengers in the coach, guide them to their berths/seats and prevent unauthorised persons from the coach. He shall in particular ensure that persons holding platform tickets, who came to see off or receive passengers do not enter the coach.*

*14. He shall ensure that the doors of the coach are kept latched when the train is on the move and open them up for passengers as and when required.*

*16. He shall ensure that the end doors of vestibuled trains are kept locked between 22.00 and 6.00 hrs. to prevent outsiders entering the coach.*

*17. He shall remain vigilant particularly during night time and ensure that intruders, beggars, hawkers and unauthorised persons do not enter the coach."*

11. The above duties clearly show that there is a responsibility cast on the TTE attached to the second class sleeper coach to be very vigilant about anyone other than the reserved ticket holders entering the compartment, to such an extent that he is required to prevent even a relation of the passenger holding a platform ticket who comes to see off a passenger from entering a coach. The TTE is particularly required to take special care in the night as brought out in Sl. No. 16 and 17. Sl. No. 14 clearly casts a responsibility on him to ensure that the doors of the coach are kept latched when the train is on the move. In the case before us, it is the contention of the Respondent that the intruder came when the train was on the move in the night and this has not been seriously challenged.

Admittedly, the TTE has failed in the performance of his duties which lead to the incident of theft. The arguments of the Petitioner that the rules nowhere provide that there should be a TTE for each sleeper coach cannot be accepted because, then, the impressive list of duties which would remain only on the paper, since they cannot be effectively enforced.

12. This Commission has held in the case of Union of India & Anr. vs. Manoj H. Pathak, reported as II [(1996) II CPJ 31 (a)(NC)] as under:

*"It is not in dispute that the complainant had hired services of Railway Administration for consideration and if there is any negligence or deficiency in service on the part of the Railway Administration, then it is a consumer dispute within the scope and ambit of Section 2(1)(d) of the Act. The Complainant was entitled to be carried safely in the train upto its destination in the reserved compartment. However, if any person enters into any reserved compartment unauthorisedly, then besides being liable for criminal prosecution he can be removed from the Railway compartment by any Railway servant or by any of the person whom such Railway servant may call to his aid (see Section 147 (2) of the Railway Act, 1989). The Railway Administration neglected in checking reserved railway compartment and then failed to remove them forcibly for which they are duly empowered by the statute".*

13. In the case of GM, Eastern Railway & Anr. vs. Smt. Malti Gupta (1999) III CPJ 573, where theft of three suit cases from the reserved sleeper coach occurred, the State Commission held that it is a clear case of dereliction of duties resulting into theft of personal baggages of the three passengers due to negligence on the part of the railway administration and its servants.

14. In the case before us, the Respondents argued that the TTE was nowhere to be seen at the time of the incident. On behalf of the Petitioners, this was denied and it was argued that the Head TTE Shri R.K.Gupta was in fact present and also tried to help the Respondent. However, in the affidavit filed by the said R.K. Gupta he had not denied that he was not in the coach when the theft by the intruder took place.

15. A major responsibility cast on the TTE in addition to examining the tickets is that of ensuring that no intruders enter the reserved compartments. We tend to agree with the respondent that the TTE was not available at the time of entry by the intruder. This is certainly a gross dereliction of duty which resulted in deficiency in service to the Respondents. The price difference between the unreserved ticket and a reserved ticket is quite high and the travelling public who buy a reserved ticket would expect that they can enjoy the train journey with a certain minimum amount of security and safety.

16. Rule 1301 (I)(iv) of IRCA No. 24 is of no help to the Petitioner. The question of Respondents not taking insurance for the Railways to take extra precautions, is no relevance here. The railway staff have not taken even the basic precaution of preventing the entry of outsiders. Similarly, Rule 506.2 of IRCA is also of no avail to the Petitioner. One has to presume that passenger would take reasonable care of his luggage. But, he cannot be expected to take measures against intruders getting easily into reserved compartments and running away with goods, when the Railway Administration is charged with the responsibility to prevent such unauthorised entry. We have entered the 21st century and we cannot carry on our daily life in the same age old fashion with

bearing brunt of indifferent service provided by public authorities like Railways. People expect in the 21st century a modicum of efficient and reliable service, which provides at least safety of person and property while travelling in reserved compartments.

17. Taking into account the circumstances of the case, we uphold the order of the State Commission with the slight modification in the rate of interest. The State Commission awarded at 18 %, which according to us is on the higher side and we reduce it to 9%. The Revision Petition is dismissed and the order of the State Commission is upheld with this slight modification. In the facts and circumstances of the case, we leave the parties to bear their own costs.