

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI**

DATED THE 24TH JANUARY, 1997.

FIRST APPEAL NO. 602 OF 1993

Union of India & Ors. - Appellants  
Vs.  
Nathmal Hansaria & Anr. - Respondents

Before: Hon'ble Mr. Justice V.Balakrishna Eradi, President. Hon'ble Mr. Justice S.S Chadha, Member, Dr.(Mrs.) R. Thamarajakshi, Member, Mr. S.P.Bagla, Member.

ORDER

S.P. BAGLA, MEMBER

Ministry of Railways of the Government of India along with the General Manager, Northern Railway, New Delhi and the General Manager, Northern-Frontier Railway, Assam are the Appellants and Shri Nathmal Hansaria and Smt. Gita Devi Hansaria are the Respondents in this appeal against the Order of the Assam State Commission awarding Rs. 2,25,000/- to the Respondents for the accidental death of Kabita Hansaria, the daughter of Shri Nathmal and Smt. Gita Devi Hansaria while travelling in the Tinsukhia Mail on the 27th December, 1990 from Delhi to Guwahati.

The admitted facts of the case are that Kabita Hansaria accompanied by her mother and son travelled in the Tinsukhia Mail which started from Delhi for destination, Guwahati on 27-12-1990. The train had the facility of movement between compartments connected by vestibules so that the passengers could move from one compartment to another. The deceased Kabita while passing through the interconnecting passage fell down and died as a result of crush injuries on the head caused by run over by the train.

The Railway Ministry has contended that in view of the provisions of Section 13 read with Section 15 of the Railway Claims Tribunal Act, 1987 a complaint of this nature cannot be brought before the consumer disputes redressal form. Section 13 of the Act reads as follows:

"13. Jurisdiction, powers and authority of Claims Tribunal --

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act, --

(a) relating to the responsibility of the railway administration as carriers under chapter VII of the Railways Act in respect of claims for --

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under Section 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

(2) The provisions of the Railways Act and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."

Section 15 reads:

"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-section (i) of Section 13."

The principal contention of the Railway Ministry, apart from denying all the facts contained in the petition of the Complainant-Respondent as regards the lack of safety devices in the passage inter-connecting compartments, is that the consumer disputes redressal agencies cannot consider any complaint of this nature in view of Section 15 of the Railway Claims Tribunal Act read with Section 13 as reproduced earlier. It would be seen that Section 13(a)(2)(i) authorises the Railway Claims Tribunal to determine and award compensation payable under Section 82 of the Railways Act and the Rules made thereunder. The Rules made thereunder known as Railway Accident (Compensation) Rules, 1990 prescribe the procedure for determining the compensation and also the limit of compensation for death and various types of injuries including loss of limbs.

The Assam State Commission in their order dated 18-9-1993 have dealt with the question of jurisdiction of the consumer disputes redressal agencies in regard to such claims. The State Commission has pointed out two important and relevant factors in this regard, namely, (1) that a railway passenger travelling in a train on payment of consideration is a consumer within the ambit of the Consumer Protection Act, 1986; and (2) Section 82-A of the Railways Act, mentioned in Section 13 of the Railway Claims Tribunal Act, 1987 and the Rules made thereunder provide for compensation for "railway accidents" and not for an "accidental" death of this nature. "Accident" has been defined in Rule 2 of the Railway Accidents Compensation Rules, 1990 as an accident of the nature described in Section 124 of the Railways Act which reads as follows:

"When in the course of working of 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 purpose of this section "passenger" includes a railway servant on duty.

It is apparent from the reading of Section 124 of the Railways Act that death of a passenger while passing through from one compartment to another, because of absence of grills and other safety devices in the passage cannot be described as "a railway accident". It is an accidental death alright, but death in the circumstances, as in this case, cannot be described as resulting from a railway accident. The State Commission has rightly pointed out that the death of Kabita Hansaria was not due to any railway accident, but was an accidental death in as much as she fell down from the running train while going from one compartment to another through the passage meant for such purpose in the absence of such safety devices as could have prevented such a fall. That the death of Kabita Hansaria caused by being run over by railway is not denied and is borne out by the medical report as well, which has been accepted by the S.D.J.M. vide his Order dated 11.12.1991. The Railways have denied the absence of safety devices in the passage stating that it was a new coach turned out of J.U.W.S. workshop only on 17-11-1990 after a complete overhauling and had a new vestibule in perfect condition required for passenger safety, including the side grills, and further that all coaches are thoroughly checked at the starting point before the commencement of journey and no such defects were found at that time. The noticeable point however is that the Railways have not contended that this particular coach was checked on the fateful day. What they have stated in their appeal is only a statement regarding the procedure that the coaches are thoroughly checked at the starting and terminating points before commencement of journey and since no defects were found, the coaches were allowed to ply. This general statement of practice and procedure does not appear to be a conclusive proof that this coach was checked on 27-12-1990 and the check report indicates no such defect or absence of safety devices, as no inspection or check report has been produced by the Railways in support of their contention. After considering the facts of the case and carefully going through the points raised by the Railways, we are of the opinion that the State Commission is right in pointing out that a railway passenger is a consumer and the death of Kabita Hansaria was caused by her fall from the passage between the two compartments because it did not have grills on sides to hold her back in case of a jerk during the movement of the train.

The Complainant-Respondents had claimed Rs. 5 lakhs as compensation for the death of Kabita Hansaria and Rs. 3 lakhs for mental agony, etc. The Commission, in their Order, put these amounts as Rs. 2 lakhs and Rs. 25,000/-. We consider the amount awarded by the Commission as just, fair and reasonable. Incidentally, the compensation for death in case of a railway accident, as under the Railway Accidents Compensation Rules, 1990 is also Rs. 2 lakhs. In the result, the order of the State Commission is confirmed and the appeal of the Railway Ministry is dismissed with no order as to costs.