

(2024) 11 NCDRC CK 0091

National Consumer Disputes Redressal Commission

Case No: Revision Petition No.1382 Of 2015

Union Of India & 3 Ors

APPELLANT

Vs

Daya Shanker Tiwari

RESPONDENT

Date of Decision: Nov. 26, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)

Hon'ble Judges: A. P. Sahi, President Member; Dr. Inder Jit Singh, Member

Bench: Division Bench

Advocate: Sanjeev Kumar Verma

Final Decision: Dismissed

Judgement

Dr. Inder Jit Singh, Member

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 01.01.2015 of the State Consumer Disputes Redressal Commission, U.P. (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 2223/2005 in which order dated 26.03.2003 of District Consumer Disputes Redressal Forum, Pratapgarh (hereinafter referred to as District Forum) in Complaint (CC) No. 205/2003 was challenged.

2. While the Revision Petitioners (hereinafter also referred to as Opposite Parties) were Appellants before the State Commission and Opposite Parties before the District Forum and the Respondent (hereinafter also referred to as Complainant) was Respondent before the State Commission and Complainant before the District Forum. Notice was issued to the Respondent on 08.09.2015. Parties filed Written Arguments on 16.07.2020 (Petitioner) and on 17.09.2018 (Respondent) respectively.

3. 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: -

The complainant booked ticket for journey from Howrah to Pratapgarh by train No. 3005 Howrah-Amritsar Express on 28.02.2002 and got his reserved seat in coach S-7 Berth No. 39. When the train reached at Patna Junction, he found that his VIP suitcase containing Rs.35,000/- cash, other items costing Rs.7,000/- and the VIP suit case worth Rs.1900/- was found missing. The complainant could not find TTE, attendant and security guard in reserved coach and it was known that all the A/C coach were closed inside and they were sleeping in that coach. The complainant reached at Pratapgarh station by the train and on arrival, the complainant lodged a written report to GRP, Pratapgarh regarding above incident without delay but no action was taken. Hence, filed complaint before the District Forum.

4. Vide Order dated 28.11.2005, in the CC No.205/2003, the District Forum accepted the complaint and directed the OP to pay 75% amount of Rs.32925/- of total amount of Rs.43900/- as compensation and 6% annual interest from the date of complaint i.e. from 26.03.2003 be paid.

5. Aggrieved by the said Order dated 28.11.2005 of District Forum, Petitioners appealed in State Commission and the State Commission vide order dated 01.01.2015 in FA No. 2223/2005 has dismissed the Appeal.

6. Petitioner has challenged the said Order dated 01.01.2015 of the State Commission mainly on following grounds:

i. The complaint is not maintainable and was liable to be dismissed as there is no deficiency of service on the part of the OPs-1 & 2 and their names be deleted in the interest of justice being not necessary parties i.e. Petitioner Nos. 1 &2.

ii. As per the statement of Complainant, the loss of suitcase came into the knowledge of him at Patna Station. The checking staff of East Central Railway Danapur manages this train from Kayul station to Danapur just after Patna junction, which comes under the control of GM-East Central Railway, Hajipur. Hence, OPs-1 & 2 be deleted from the array of parties in the interest of justice.

iii. Both the State Commission and District Forum failed to appreciate Section 100 of the Indian Railways Act, 1989. Admittedly, the suitcase which is alleged to have lost/stolen was not booked with the railways and the complainant was carrying in his charge and it was under his supervision. There is no negligence on the part of Railway's staff, as being alleged now and since the suitcase was not booked with the Indian Railway's, so the Indian Railways cannot be held liable for such alleged loss/theft of suitcase. The possibility of taking away of the suitcase by some co-passenger could not be ruled out. According to Rule 506 of the Railways IRCA, Coaching Tariff No. 25, the passenger

himself is responsible for the safety of his luggage and the Railway Authorities cannot be held liable for any loss or damage.

(iv) It escaped the attention of both the Fora(s) below that Section 103 of the Railways Act, 1989 prescribes the extent of monetary liability in respect of any consignment. Where any consignment is entrusted to Railway Administration for carriage by railway and the value of such consignment has not been declared as required under sub-Section (2) by the consignor, the amount of liability of the railway administration for the loss, distribution, damage, determination or non-delivery of the consignment shall in no case exceed such amount calculated with reference to the weight of the consignment as may be prescribed and where such consignment consists of an animal, the liability shall not exceed such amount as may be prescribed. Notwithstanding anything contained in sub-Section (1) where the consignor declares the value of any consignment at the time of its entrustment to the Railway Administration for carriage by railway and pays such percentage charge as may be prescribed on so much of the value of such consignment as is in excess of the liability of the Railway Administration as calculated or specified as the case may be under sub section (1) of the liability of the Railway Administration for the loss, destruction, damage, determination or non-delivery of such consignment shall not exceed the value so declared. The Central Govt. may from time to time by notification direct that such goods as may be specified in the notification shall not be accepted for carriage by Railway unless the value of such goods is declared and percentage charge is paid as required under sub section (2).

(v) The TTE has stated in his affidavit that he managed the coach from Kayul to Mokama but neither any information about the theft of suitcase was given to him, or to the checking staff of Danapur Division nor checking staff of Lucknow Division from Mughalsarai to Pratapgarh. Merely on the basis of allegation alone, the District Forum cannot award such a heavy compensation and State Commission, without applying its mind, confirmed the order passed by the District Forum.

(vi) If such complaints are accepted, then every theft case can be attributed to the negligence of the Police Department and a complaint can be filed for the deficiency in service on the part of police.

(vii) Assuming, without admitting, the luggage which the complaint was said to be carrying, as there is no proof that he was carrying or not. Secondly, it was free of charge at the exclusive risk of complainant. Service, free of charge are outside the purview of Consumer Protection Act, 1986.

(viii) As per para -901 of Coaching Tariff No. 25 Part-I, Volume-III, Article of special value in part of Schedule-II of Railways (Extent of monetary liability and prescription of percentage charge) Rule, 1990 in exercise of power under section 103(3) of the Railway Act have been mentioned. These articles are gold, silver, pearls, jewellery, precious

stone, currency notes and coins other than government treasure etc. The value of such articles / per packages must be declared on the forwarding note. The booking of such articles will not be done unless value is declared and percentage in charge is paid on the excess value. The amount of claim for loss, destruction damage, deterioration or non-delivery shall not exceed the value so declared. This rule has also been mentioned in para- 1101 of Indian Railway Commercial Manual Volume-1.

7. Heard counsel for the Petitioner. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing by the Petitioners, are summed up below.

7.1 In addition to the averments made under the grounds (para 6), the Petitioners contended that from perusal of the FIR it is evident that the Railway cannot be held negligent for the said theft of alleged articles on the ground that the complainant did not allege that any unauthorized passenger was travelling in the train or the TTE had allowed unauthorized person to travel in the train, it was not alleged that the door of the coach was not locked from inside from 10.00 pm 6.00 am which was the duty of the TTE to prevent entry of any unauthorized passenger. It was not stated that the complainant had locked his luggage with a ring provided below the berth. there is no allegation that any unauthorized passenger was travelling in the train or TTE had allowed any unauthorized passenger in the train and also there is no allegation that the door/vestibule door of the coach was not locked between 10.00 pm to 6.00 am, which was the duty of the TTE as per Government of India Notification dated 11.09.1998. It is further contended that in para 6 of the complaint, complainant alleged that 'the door of the reserved coach was fully opened in whole night and the entry of unsocial elements and unauthorized persons was continuously remained' which is ridiculous and the entire story as alleged in the complaint is cooked up and afterthought. It is further contended that the complaint is vague. In the body of the complaint it is alleged that the complainant was having cash amount of Rs.42000/- but in prayer clause he claimed Rs.43,900/. District Forum also in its order wrongly recorded that he was having cash amount of Rs.35,000/- with him. It is also contended that the complainant has nowhere disclosed in his complaint that where the theft took place and when he came to know about it. The complainant also did not disclose where he had kept his luggage, how many luggage he was carrying with him and whether the said suitcase was tied with the chain given below the berth or not. It is also contended that the complainant alleged that throughout the journey he was watching that the door was open and unauthorized person was moving in the train, when he did not sleep then how his luggage was stolen. The District Forum also held the complainant was negligent but in spite of that the District Forum allowed the Complaint. It is further contended that Section 100 of the Railways Act, 1989 reiterated as follows:

"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 therefor 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 servants."

The Petitioners further contended that Clause 146 of Coaching Tariff No. 24 Part-1 Vol.1, which is as follows, Railway cannot be held liable for the loss of any unbooked luggage.

Clause 146 of Coaching Tariff:

"Responsibility of the Railway: The Railway Administration hereby gives public notice:

(1) That they are not accountable for any articles, unless the same are booked and a receipt for them is given for their clerk or agent."

Rule 500 of the Coaching Tariff No. 24 Part 1 also provides that, "All articles taken into the carriage are carried at the entire risk of the owners".

According to Rule 506.2 of the Indian Railway Conference Association Coaching Tariff No. 25 (Part 1) (Vol.1) under Chapter-V under the heading "Luggage", it states that the passenger himself is responsible for the safety of his luggage and the Railway Authorities cannot be held liable for any loss or damage. Under the said Coaching Tariff, it is mentioned therein that "Passengers are requested to take into carriage only such articles of personal luggage as are required for their own use on the journey can be placed in the carriage."

It is further contended that the Complainant is alleged to be a Sr. Advocate. Hence, he very well knows that what should be the ingredients in the complaint for establishing negligence and deficiency in service on the part of Railway for the said alleged theft. It is also contended that by selling ticket or making reservation of seat or berth, the Railway does not undertake the responsibility of Security of personal luggage of any passenger which the passenger takes with him/her and keeps with him/her without being booked, the allegation of theft of attaché and its contents have not been proved. The Complainant was allotted berth No. 39, which was side lower berth, hence, luggage kept therein is more vulnerable and anyone can take away the said luggage very easily. The Railway provides ring below the berth to avoid such occurrence. The complainant was bound to tie his attaché with the said lock provided below the berth, in which he failed. Since the complainant was carrying his attaché with him hence he should have more vigilant in taking care of his belongings at least when the train

arrives any Railway Station, where many passengers board & de-board the train as the TTE and Coach Attendant cannot keep eye on each and every passenger all the time. It is also contended that the complainant lost his luggage due to his own negligence. In support of their contentions, the Petitioners have relied upon various judgments passed Hon'ble Supreme Court and by this Commission.

7.2 On the other hand it is contended by the Respondent/Complainant that FIR was lodged on 29.08.2002 immediately after reaching Pratapgarh Junction about the theft of Complainant's luggage. No investigation was made by the Police and the FIR has therefore, no significance at all. It is further contended that there is no defect in the FIR as has been held by the Hon'ble Apex Court in the case of Superintendent of Police C.B.I. and Others Vs. Tapan Kumar Singh reported in (2003) 46 A.C.C. Page 961 (Relied upon para 20 of the said judgment). The aim of the enactment of the Consumers Act is to give the litigants a pro-speedy remedy, whereas this case is pending in the courts for the last 16 years or more.

8. Challenge is to order dated 01.01.2015 of the State Commission in Appeal No. 2223/2005 which was disposed off through a common order in four Appeals (Nos. 2223/2005, 1330/2007, 1399/2007 and 1145/2014) containing similar law points. These Appeals filed by the Railways were dismissed by the State Commission. Appeal No. 2223/2005 was filed against the order of District Forum in CC/205/2003 dated 28.11.2005, vide which complaint was allowed and OP was directed to pay 75% of Rs.43,900/- i.e. Rs. 32,925/- along with interest @6% from the date of complaint.

9. In this case, Respondent had filed written submissions/ objections dated 17.09.2018 stating inter alia that as he is not keeping good health and due to his old age, he is not in a position to attend the hearings before this Commission and he may be exempted from his personal appearance. In this application, the Respondent has stated:

7. That the learned counsel for the revisionists has sent the photo copy of F.I.R. lodged by myself on 29.08.2002 immediately after reaching Pratapgarh Junction about the theft of my attache along with the translation of F.I.R. but nothing about the purpose of summoning it or the defects in it are disclosed. It is thus apparent that the learned Counsel for the revisionists wants to unnecessarily delay the disposal of the revision which has no legs to stand.

8. That no investigation was made by the police and the F.I.R. has therefore no significance at all, at this stage.

9. That there is absolutely no defect in the F.I.R. as has been also held by the Hon'ble Appex court in the case "Superintendent of Police C.B.I and Others Vs. Tapan Kumar Singh reported in (2003(46) A.C.C. on Page 961. Para 20 of the said case law may kindly be perused by the Hon'ble Commission. Since no

investigations was made by the police the summoning of F.I.R. by the learned counsel for revisionist has no significance.

10. That the photo copy of case law of the Hon'ble Appex Court cited in "A.C.C. 2003 (46) on page 961. S.C. is submitted with this application." (Anex. 2)

11. The aim of the enactment of the consumers Act is to give the litigants a pro speedy remedy, whereas this case is pending in the courts for the last 16 years or more. Under these circumstances I very respectfully pray the Hon'ble Commission to dismiss the revision with costs and obliged."

Respondent also filed his objections on 17.09.2018 and sought exemption from appearance. Subsequently, Respondent expired and his legal heirs were impleaded.

10. It is the case of OP Railways that under the provisions of Section 100 of the Railways Act, 1989, Railways in not responsible for theft/loss of un-booked luggage. Further Rule 146 of the Coaching Tariff No. 24 Part-1, Vol. 1 also states that Railway cannot be held for the loss of any un-booked luggage, Rule 500 of the said Tariff also provide that all the articles taken into the carriage are carried at the entire risk of the owners, according to Rule 506.2 of Indian Railway Conference Association Coaching Tariff No. 25 (Part 1) (Vol.1), passengers himself is responsible for the safety of his luggage and the Railways cannot be held liable for any loss of damage. OP Railways also contended that complaint is vague, it does not disclose where exactly the theft took place, and when he came to know about it, he also did not disclose where he had kept his luggage and whether the said suitcase was tied with the chain given below the berth or not, the Complainant did not disclose how many luggage he was carrying with him. The TTE had filed affidavit before the District Forum that throughout he was on duty in the said train and no occurrence was reported to him, all the doors of the said coach were closed, and there was no unauthorized passenger in the train as there was no vacant berth. OP Railways contended that by selling ticket or making reservation of seat or berth, the Railway does not undertake the responsibility of Security of personal luggage of any passenger which the passenger takes with him/her and keeps with him/her without being booked, the allegation of theft of attaché and its contents have not been proved. The Complainant was allotted berth No. 39, which was side lower berth, hence, luggage kept therein is more vulnerable land anyone can take away the said luggage very easily. The Complainant has lost his belongings due to his own negligence. In support of its contentions, OP Railways have relied upon following judgments of this Commission and Hon'ble Supreme Court:-

a) Zonal Manager/General Manager, Bilaspur (C.C.) & Anr vs. Purushottam Mohta, I(2019) CPJ 335 (NC).

b) Union of India & Ors v. Rama Shanker Misra & Anr. IV (2015) CPJ 653 (NC).

- c) **South Eastern Railway & Anr. versus Swapna Mukherjee, I (2019) CPJ 541 (NC)**
- d) **Chief Station Manager South East Central Railway & Ors. V. Mamta Agrawal, IV (2017) CPJ 125 (NC)**
- e) **Vivek Chhiba v. South East Central Railway, Bilaspur, Revision Petition No. 1939 of 2016.**
- f) **Union of India & Anr. v. Lakshit Joshi- III (2018) CPJ 392 (NC).**

11. State Commission, while dismissing the appeal filed by the OP Railways, has observed as follows:

"

() ()

"A major responsibility cast on the TTE in addition to examining the tickets is that of ensuring that no intruders enter the reserved compartments... 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 traveling public who buy a reserved ticket would expect that they can enjoy the train journey with a certain minimum amount of security and safety.

... 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 unauthorized 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 traveling in reserved compartments." This view has been reaffirmed in the case of G.M. South Central Railway Vs. Dr. R.V. Kumar & Anr., 2005 CTJ 862 (CP) (NCDRC).

In our view, there is a clear deficiency of service on the part of the Petitioners in allowing the unauthorized persons to enter the reserved compartment and stealing the attaché of the Respondent.

In view of the aforesaid decisions of this Commission, there is no reason for s or interfere with the order of the State Commission in revisional jurisdiction under Section 21 (b) of the Consumer. Union Of India Vs Sanjiv Dilsukhrai Dave (N.C.) 2003 (51) ALR 40 (Consumer)

10 11 :-

Para10. As regards the issue of negligence of the Railway Administration, a list of ----- is prescribed by Railway Administration "TTE for Sleeper Coaches" is brought on record. duties prescribed at Sl. Nos. 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 unauthorized 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 vestibules 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 unauthorized persons do not enter the coach."

Para11. 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 tickets 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. Nos. 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.

() () "It is not in dispute that the complainant had hired services of Railway Administration for consideration and if there is any negligence a 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 beside 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 (of the Railways 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."

G.M., Eastern Railway and another V. Smt. Malti Gupta (1999) iii CPJ 573

:-where theft of three suitcases from the reserved sleeper coach occurred, the State Commission held that is a clear case of dereliction of duties resulting into theft personal baggages of the three passengers due to negligence on the part of the Railway Administration and its servants.

**Revision Petition 602/2013 (N.C) decided on
22 July 2013 :-**

Para 8. Undisputedly, the complainant and her daughter were traveling in a reserved coach and it was the duty of the TTE to ensure that no intruders entered the reserved compartment. Since apparently there was a failure on the part of the TTE to prevent entry of unauthorized person in the coach during the night, the Fora below where right in holding the petitioner liable for deficiency in service to the respondent in this regard. So far as the applicability of section 15 of the Railway Claims Tribunal Act, 1987 is concerned, we cannot agree with the contention of learned counsel because this section bars jurisdiction of the other courts only "in relation to the matters referred to sections (1) and (1A) of section 13". Section 13 is reproduced thus:-

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

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

(ii) compensation payable under Sec. 82-A of the Railway Act or the rules made there under; and

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

[(1-A) The Claims Tribunal shall also exercise, on and from the date of Commencement of the provisions of Sec. 124-A of the Railways Act, 1989 (24 of

1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any Civil Court in respect of claims for compensation now payable by the Railway Administration under Sec. 124-A of the said Act or the Rules made thereunder.]

(2) The provision of the [Railways Act, 1989] and the rules made thereunder shall, so far as may be, be applicable for inquiring into or determining any claims by the Claims Tribunal under this Act."

Para 9. Plain reading of section 13 indicates that the case of the respondent does not fall under any of the categories mentioned in the section. In view of this, the jurisdiction of the consumer Fora cannot be barred by virtue of the provisions of section 15.

0 SLP to
appeal (Civil)/2014 (/)

0 -----

0-2223/2005

0-205/2003 / 28/11/2003

:-

"

/- /-0

//

"

35000/-0

28/08/2002

0- 7 0-39 8

4

1900/-0 35000/-0 7000/-0

/

29/08/2002

28/29/08/2002

7 8

0-7 -8

/

100
(0 24 0-506.2

0 24 (130 ,

, 35000/-0

()
00

"

12. District Forum, while allowing the Complainant has observed as follows:

"We heard learned counsel of both the parties and studied the documents available in the file. The complainant has said in his affidavit that the movement of unauthorized and unsocial elements was remained frequently into the reserved coach in whole the night. The confirmation of statement of the complainant establishes from the affidavit of co-passenger Shri A.Malik and Shri Indramani Dubey. The affidavit of Shri Vishwanath Dwivedi is not reliable because he is concealing his irresponsibility and carelessness of his working and telling lie that he was present in the coach in whole the night and the door of the coach was closed.

The advocate of the complainant is depend upon 2003 ALR 40 (consumer) Union of India and others v/s Sanjeet Dilshaunke Dev in which Hon'ble National Commission has said that it is not possible for the passenger to entrust the

luggage to the Railway employee for the purpose of security. It is not proper that the passenger may demand again and again from the Railway employee to take towel and soap on the requirement and it is also not possible for TTE alone to attend the passengers all the time. The duty of TTE has been defined at SN 4, 14, 16 and 17 in the coach. It is the responsibility upon the TTE that he should not allow to enter any outsider in the reserved coach from 10:00 clock at night to 05:00 O clock in the morning and he should make more careful. The confirmation of the statement of the complainant establishes from the affidavit of co-passenger Shri A. Malik and Shri Indramani Dubey and we reach on the conclusion that the opposite party did no discharge his duty properly. The complainant has confirmed upon the Judgement of Hon'ble Supreme court in case of Somwati M. Dhanwati in which Hon'ble Supremet court has made analysis section 100, 103 and 124A of Railway Act. The complainant has attached citation 2003- CPJ-16 Kandhimathi and others v/s Bharat Sarkar, we found in appreciation that it is deficiency in service against opposite party not to give sufficient security for his luggage. It is also important that it was proper to carry Rs. 35000/- for the treatment of his daughter but when it was not incurred for the purpose, why did he not make draft of this amount by the complainant while he was himself advocate. Why he proceeded for journey, why did he not lock his luggage with iron rope after purchasing lock at the rate of Rs. 5/- of Rs. 10/-. Hence, we found that the complainant has also given his contribution on the said theft of his luggage. Due to contributory negligence, 25% recovery of the compensation is reduced to the end of justice.

ORDER

After accepting the complaint of the complainant, the opposite party is directed to pay 75% amount of Rs. 32925/- of total amount of Rs. 43900/- as compensation and 6% annual interest from the date of complaint i.e. from 26-03-2003 be paid."

13. The scope of Section 100 of the Railways Act and other related instructions of the Railways with respect to liabilities of Railways in cases of theft/loss of luggage had come up for consideration in many cases before the Commission in the past. This Commission in Indian Railways through its General Manager & Anr. Vs. Smt. Uma Agarwal, R.P. No. 1099 of 2020, decided on 25.07.2023, considered various legal issues with respect to liability of Railways in such circumstances. Extract of relevant paras of order of this Commission in this case is reproduced below:

"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 be 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.

xxxx

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* 2012 SCC Online Ncdrc 183, 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 or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld."

14. Similar issue was considered by this Commission in Ashok Kumar Purohit Vs. Divisional Commercial Manager, South Eastern Central Railway & Anr., RP No. 1353 of

2019, decided on 16.10.2023. Extract of relevant paras of this order is reproduced below:

"9. In Dinesh Agrawal Vs. Indian Railway and Others, RP No. 3265 of 2014 decided on 03.09.2015, this Commission observed:

5. Section 100 of the Railways Act, 1989 on which reliance is placed by the petitioner reads as under:

"Responsibility as carrier of luggage - A railway administration shall not be responsible for the loss, destruction, damage, deterioration of 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 servants."

It would thus be seen that the Indian Railways are not responsible for the theft or loss of the luggage carried by the passengers with them, unless it is shown that such loss or theft occurred due to negligence or misconduct on the part of the Railways or any of its employees.

6. The learned counsel for the petitioner submits that though no unauthorized person was entitled to enter the compartment in which the complainant and his wife were travelling, the railway officials permitted the such persons to enter the coach and it was on account of the such unauthorized entry that the theft could be possible. We however find that there is no evidence of any unauthorized person having actually entered the coach in which the complainant and his wife were travelling. This is complainant's own case that they were sleeping at the time of theft took place. Therefore, they possibly cannot have personal knowledge about the alleged presence of some unauthorized persons in the coach. Hence, we are satisfied that the alleged presence of unauthorized persons in the reserved compartment could not be established. The possibility of a fellow passenger, travelling on a reserved ticket having committed the theft and got down at a station, when the complainant was asleep cannot be ruled out in the facts and circumstances of the case. The learned counsel for the petitioner also submits that TTE did not render requisite cooperation to the complainant after the theft was reported to him. The plea taken in the reply filed by the OPs is that the TTE had rendered all possible help to the complainant as soon as he was informed the alleged theft. There is no independent evidence of non-cooperation on the part of the TTE. In any case, the alleged theft cannot be attributed to the said non-cooperation on the part of the TTE since it had already been taken before the matter was reported to him.

10. In Union of India & Anr Vs. Lakshit Joshi, RP No. 432 of 2016 decided on 02.11.2017, this Commission observed :

9. Thus, it is clear that the luggage was lost when the train was at halt at the station when passengers get down the train and some others board the train. In such situation, if the luggage was lying unattended, anybody could have walked off with the bag. This is the time when the TTE and the conductor are also busy in some other necessary activities. Some time even the staff is changed at such big stations. Otherwise, also there are instructions that passengers should not use the washroom when the train is halting at a railway station. In many judgments passed by this Commission, this Commission has taken a view that Section 100 of the Railways Act, 1989 is applicable in such cases and until some negligence or misconduct of any employee is proved, the Indian Railways is not liable. This Commission in the case of Union of India and others vs. Rama Shanker Misra and another (supra) has held that :

"Consumer Protection Act, 1986 – Sections 2(1)(g), 21(b) – Railways –baggage stolen by cutting chain of lock - Loss of valuables – Deficiency in service allege – Compensation claimed – District Forum allowed complaint – State Commission partly allowed appeal - Hence revision – No averment in complaint which could constitute any negligence or misconduct or even deficiency in service on part of railways or any of its employees- Petitioner could have been liable to compensate only if some negligence or misconduct on part of railway employee was established- As no such negligence having even been alleged it would be difficult to sustain impugned order."

xxx

11. The case cited by the learned counsel for the respondent/complainant which is Union of India through its General Manager vs. Dr (Smt.) Shobha Agarwal (supra) has different facts. In fact, the complainant in the referred case had taken all the precautions and had tied up their suitcase with the chains fastened with the berth and the theft has occurred after cutting the chain during night. Whereas in the present case, theft had occurred in the morning when the train was halting at a big station and the bag was left unattended for some time by the complainant. Thus, the case cited by the learned counsel for the respondent/complainant is not directly applicable in the present case.

11. In Station Superintendent and Anr. Vs. Surender Bhola, 2023 SCC Online SC 741, the Hon'ble Supreme Court held :

"5. We fail to understand as to how the theft could be said to be in any 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."

12. From the perusal of various judgments of this Commission relied upon by the respondent / Railways, it is evident that under Section 100 of the Railways Act 1989, Railways are not responsible. It would thus be seen that the Indian Railways are not responsible for the theft or loss of the luggage carried by the passengers with them, unless it is shown that such loss or theft occurred due to negligence or misconduct on the part of the Railways or any of its employees and railways could have been liable to compensate only if some negligence or misconduct on the part of railway employee was established.

13. In Northern Railway Vs. Neetu Gupta & Anr, RP No. 3164 of 2017 decided on 14.05.2018, this Commission observed as follows:

6. The learned counsel for the petitioner also relies upon Section 100 of the Railways Act. The aforesaid provision was also considered by this Commission in Syed Mubuddin Rizvi (supra) and the following view was taken:

" 6. As regards Section 100 of the Railways Act, 1989 on which reliance is placed by the petitioner reads as under:

"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 servants".

It would thus be seen that the Indian Railways are not responsible for the theft or loss of the luggage carried by the passengers with them, unless it is shown that such loss or theft occurred due to negligence or misconduct on the part of the Railways on any of its employees."

14. Same was the view taken by this Commission in R.P. No.3799 of 2014 Union of India Vs. Ajay Kumar Agarwalla & Anr. decided on 26.05.2015, wherein this Commission observed :

7. The learned counsel for the petitioner now relies upon Section 103. The aforesaid provision, in my view, has no applicability to a case where compensation is claimed on account of negligence on the part of the railway officials.

8. Coming to the alleged negligence on the part of the petitioners, it is not in dispute that the complainants were travelling in a reserved compartment. In the complaint filed before the concerned District Forum, the petitioners did not dispute the aforesaid position. They also did not dispute the allegation of the complainants that a beggar woman had entered the reserved compartment at Mughal Sarai railway station and had committed theft of the purse being carried by complainant no.1. Since the complainants were travelling in a reserved compartment, it was the duty of the railway officials to ensure that no unauthorized person entered the said compartment at Mughal Sarai railway station. By not preventing the entry of a beggar woman in a reserved compartment, the railway officials committed an act of gross negligence and since the aforesaid negligence resulted into a theft, they are also liable to reimburse the complainants for the loss suffered by them.

15. In South East Central Railway and Anr. Vs. Soni Singh and Connected matter, RP No. 2081 of 2018 and connected matter, decided on 15.03.2019, this Commission held :

7.It is the duty of the Railway Authorities to ensure that no unauthorized person travels in the Reserved Coach. If an unauthorized person travels in the Reserved Coach, the Railway authorities fail in discharging their obligation and will result in deficiency in service making them liable to reimburse the passenger for the value of goods/items, which have been stolen or snatched, which has actually happened in the present cases.

16. In Union of India Vs. Ajay Kumar Agarwalla 2015 SCC Online NCDRC 2956, 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."..... 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 2012 SCC Online NCDRC 183, 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." 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." 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 2018 SCC Online NCDRC, 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.

17. In Indian Railway and Ors. Vs. Uma Agarwal, RP No. 1099 of 2020 decided on 25.07.2023, this Commission took note of instructions of Railways contained in their office letter. No. 98/TG-V/12/3 dated 11.09.1998, which prescribe certain duties of train conductor in Ist AC, 2nd AC, 3rd AC and Ist class coaches, some of which are reproduced 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."

15. In the present case, there are concurrent findings of both the Fora(s) below against the OP Railways as regards negligence/deficiency in service on the part of Railways. As regards question of liability of Railways with respect to loss/theft of luggage of passengers in a reserved Coach, as has been held by this Commission in many cases, which have been cited in the preceding paras, Railways will be responsible for the theft or loss of the luggage carried by passengers in the reserved Coach if it is established that such loss or theft occurred due to negligence or misconduct on the part of the Railways or any of its employees. Further, such acts of deficiency in service on the part of Railways are covered under the provisions of Consumer Protection Act, as remedies under this Act are in addition to remedies under other special statutes. Hence, we are of the considered view that State Commission has given a well-reasoned order and we find no reason to interfere with the same. There is no illegality or material irregularity or jurisdictional error in the orders of the State Commission, hence the same is upheld. Accordingly, the Revision Petition is dismissed.

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