

(2024) 11 NCDRC CK 0094

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 9 Of 2015

Northern Railway

APPELLANT

Vs

Balbir Singh

RESPONDENT

Date of Decision: Nov. 26, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 2(d), 2(1)(g), 11(2), 21(b)
- Railways Act, 1989 - Section 93, 97, 100
- Indian Penal Code, 1860 - Section 379

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

Bench: Division Bench

Advocate: Anshuman, Piyush Ahluwalia

Final Decision: Dismissed

Judgement

Dr. Inder Jit Singh, Member

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21(b) of Consumer Protection Act, 1986, against the order dated 25.09.2014 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 311/2014 in which order dated 13.08.2014 of District Consumer Disputes Redressal Forum-I, U.T. Chandigarh (hereinafter referred to as District Forum) in Complaint (CC) No. 656/2013 was challenged, inter alia praying for setting aside the orders passed by the State Commission and dismissing the complaint.

2. While the Revision Petitioner (hereinafter also referred to as Opposite Party) was Appellant before the State Commission and Opposite Party 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 23.03.2015. Petitioner filed Written Arguments on 16.07.2020 (Petitioner). Written arguments not filed by the Respondent.

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 two railway tickets for going to Kolkata alongwith his family. The tickets were from Delhi to Patna and then from Patna to Kolkata. The dates of journey were for 06.11.2011 and 09.11.2011 respectively. The complainant and his family members boarded the train from Patna and while the train was on its way to Kolkata the complainant found that his two suitcases have been stolen. The complainant tried to pull the chain but the train did not stop even on the pulling of the chain. On the next station the complainant reported the matter to GRP but they asked the complainant to report the matter to General Railway Police Station Jhajha, where the luggage was stolen. The complainant reported the matter to police station Jhajha and a case was registered by them. As per complainant, the suit cases were containing some gold, cash and clothes and the total loss amounted to Rs.1,00,000/-. The complainant contacted the OP many times. As the OP has not redressed the grievance of the complainant. Hence, the complainant filed complaint before the District Forum with the prayer that the OP be directed to pay an amount of Rs.1,00,000/- to the complainant i.e. value of the luggage, jewellery and cash etc. and also to pay Rs.50,000/- as compensation and Rs.11,000/- as litigation expenses to the complainant.

4. Vide Order dated 13.08.2014, in the CC No.656/2013, the District Forum partly allowed the complaint. Aggrieved by the said Order dated 13.08.2014 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 25.09.2014 in FA No. 311/2014 has dismissed the Appeal and upheld the order passed by the District Forum.

5. Petitioner has challenged the said Order dated 25.09.2014 of the State Commission mainly on following grounds:

i. The impugned order is bad in law as well as on facts. The order passed by the Fora below is erroneous, illegal, unsustainable, suffers from basic infirmity, perversity and liable to be set aside.

ii. The information given by the Respondent before the GRP, Jhajha is vague and misleading on the facts that while the train was on its way to Kolkata, the complainant found that his two suitcases have been stolen; on the next station the complainant reported the matter to GRP but they asked the complainant to report the matter to GRP Station Jhajha, where the luggage was stolen. The complainant reported the matter to GRP Jhajha that in the morning at around 5.00 am when I went to bathroom then all my

luggage was intact but when I wake up after the train crossed the Jhajha Station, my two suitcases were missing. From the perusal of the said statements it is not clear that if the theft occurred after Jhajha Railway Station then how the matter was reported to the GRPat Jhajha, the station which was already left.

iii. The District Forum-I, Chandigarh had no territorial jurisdiction to adjudicate the case, which is in violation of Section 11(2) of the Consumer Protection Act, 1986, as the cause of action admittedly arose after Jhajha after 5.00 am on 10.11.2011 and the information of such occurrence was reported to the GRP Jhajha i.e. all inside the State of Bihar, which comes under East-Central Railway, hence, the dispute, if any, should have been agitated only at the District Forum in Bihar having appropriate territorial jurisdiction under which the cause of action actually arose. It is well settled law that if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity. (Relied upon the judgment passed by the Hon'ble Apex Court in Jagmittar Sain Bhagat (Dr.) Versus Director, Health Services, Haryana & Ors., III (2013) CPJ 22 (SC). Thus it is clear that the finding of Fora below is without jurisdiction and the order passed by both the Fora below is non est in the eyes of law. (also relied upon judgment passed by the State Commission, Bhopal in Appeal No. 575/2000 –Dr. Gurmukh Das Khatri V. General Manager, Central Railway, Mumbai & Ors. and the judgment passed by this Commission in RP 85 of 2013- Union of India V. Smt. Niva Agrawal).

iv. The Fora below failed to appreciate that there is mis-joinder of necessary party. The cause of action arose under the East Central Railway, which is represented by its General Manager, but in the instant case ;only Manager, Northern Railway, Railway Station, Chandigarh has been made party, which has no jurisdiction over the matter as the theft alleged to have been committed near Jhajha Railway Station. The G.M., Central Railway is the necessary representative of Union of India in the instant dispute. Hence, the dispute is not maintainable as the relief sought against neither the necessary nor the proper party.

v. The selling ticket or making reservation of seat or berth the Railway does not undertake the responsibility of security of the personal luggage of any passenger which the passenger takes with him and keeps with him without being booked.

vi. The allegation of suitcases and their contents have not been proved and no evidence has been adduced even to prove that the Respondent had brought suitcases in the compartment. The passenger who is carrying valuable things in their luggage should be more vigilant at least when the train approach or leave any station. It is admitted in the statement before the Police that his both suitcases were intact at 5.00 am but he noticed about the said theft when the train crossed Jhajha Station. It is notified in the duty of TTE of Second Class Sleeper Coaches by the Government of India vide Notification dated 11.09.1998 at Sr.No.15 that "He shall ensure the end doors of

vestibule trains are kept locked between 22.00 and 0600 hrs to prevent outsiders entering the coach". It is clear from the said notification that the passengers should be more vigilant of their luggage at least of the remaining hrs. i.e. 6.00 AM to 10 P.M. Hence, in view of the said Notification there is no negligence on the part of the Petitioner. The Respondent could not prove that the alleged occurrence took place during the said period of 10.00 PM to 6.00 AM.

vii. The Railway could be held deficient or negligent in its service if the TTE or the Coach attendant would have informed about the said occurrence and could do nothing with regard to the said alleged occurrence. In the present case neither TTE was informed nor Coach Attendant of the said occurrence.

viii. For security of the personal luggage of the passenger, Railway has arranged strong iron rings under the seat so that the passenger can tie or lock its luggage with the rings and this has also been duly displaced in the Railways coaches, but the Respondent failed to use such facility by the Railways. The Respondent was carrying his luggage at his own risk as neither he entrusted the goods to the Conductor nor booked the same with Railway Authorities by paying the requisite fee.

(ix) Railways cannot be held responsible in view of Section 100 of the Railways Act, 1989. Railways cannot be held liable for the loss of any un-booked luggage according to Rule 146 of the Coaching Tariff No. 24 Part-1, Vol.1. 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 Conference Association Coaching Tariff No. 25(Part 1) (Vol.1) under Chapter V under the heading "Luggage" the passenger himself is responsible for the safety of his luggage and the Railway Authorities cannot be held liable for any loss or damage. The Petitioner has relied upon various judgments passed by the Hon'ble Supreme Court as well as by this Commission in this regard.

(x) The Respondent has wrongly relied upon the judgment passed by this Commission in Union of India Versus Sanjiv Dilsukhraj, which is not applicable in the present facts and circumstances of the case.

(xi) The Fora below has taken the case in a very casual manner and had not taken into consideration the fact that the Railway is a public utility service of the Union of India and compensation has to be given out of public exchequer.

(xii) There is apparent illegality, impropriety, incorrectness and jurisdictional error in passing the order by the State Commission and therefore deserves interference by this Commission.

6. 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 Petitioner, are summed up below.

6.1 In addition to the averments made under the grounds (para 5), the Petitioner contended that 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 there is no allegation that the TTE or any Coach Attendant was not present in the Coach or did not cooperate with the complainant. It is also contended that from the perusal of the FIR, it reveals that there is no attribution of any negligence on the part of Railways. So mere allegation of theft does not constitute any deficiency in service on the part of Railway and the complainant is not entitled for any compensation. It is further contended that the complainant has wrongly averred that he had bought two tickets, however, from perusal of tickets, it is revealed that the complainant was travelling along with six other family members and none of the family members filed any affidavit in support of the said alleged occurrence. The complainant also did not disclose that where he had kept his luggage. There is no allegation that any of the railway authority failed to cooperate with the complainant. The complainant without giving any item-wise details of the theft articles, vaguely alleged in the FIR that the theft suitcase was containing gold, cash and clothes of worth Rs.1.00 lac. The allegation of theft of suitcases and contents therein have not been proved even and no evidence has been adduced to prove that the complainant had brought suitcases in the compartment. In such circumstances the Railway cannot be held negligent. The respondent himself was negligent towards taking care of his luggage. In support of their contentions, the Petitioner has relied upon the following judgments passed by this Commission:-

i) South Easter Railway & Ors. V. Swapna Mukherjee & Anr. I (2019) CPJ 541 (NC).

ii) Union of India & Ors. Vs. Ramniwas- Revision Petition No. 547 of 2018 disposed of on 12.03.2020.

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

6.2 On the other hand Respondent contended in its Rejoinder as has been mentioned in the State Commission's order that the OP admitted the factum of theft and it was a reserved coach. OP was to ensure the safety of the luggage in the reserved coach. The complainant was a consumer qua the OP and a passenger was allowed to carry 40 Kgs of luggage on a ticket as per Railway rules. The charges for safety etc. were charged in the ticket itself and being a reserved coach, the Railways were bound to provide safety. The luggage was booked only if it exceeded certain dimensions or the same was sent through goods train. The complainant pulled the chain but the train did not stop. The

complainant reported the matter to the police authorities and a case under Section 379 was lodged by the Police. Details of goods were given to the police but the police had mentioned only gold, cash and clothes in the report. The gold included two gold bangles and ear rings worth Rs.40,000/- (approx.) and one gold chain worth Rs.25,000/- (approx.) of the wife of the complainant, cash of Rs.15,000/- and clothes of winter season i.e. sweaters, jackets etc. of Rs.20,000/- (approx.) of the complainant and his wife.

7. Earlier, an ex-parte order against the OP Railways was passed by the District Forum in CC 656/2013 on 05.02.2014, directing the OP Railways to pay Rs.1.00 lakh being the value of the items lost, Rs.10,000/- as compensation and Rs.5,000/- as litigation expenses. In appeal No. 91/2014 filed by OP Railways, State Commission vide its order dated 24.04.2014, set aside the order of District Forum and remanded the matter back to District Forum for fresh adjudication on merits. District Forum vide its order dated 13.08.2014, partly allowed the complaint with directions to OP Railways to pay compensation of Rs.10,000/- and litigation cost of Rs.5,000/-. The appeal filed by the OP Railways was dismissed vide impugned order dated 25.09.2014 in FA 311/2014. Hence, the OP Railways is before us in the present Revision Petition. During the hearing on 10.09.2024, learned Counsel for the OP Railways submitted that no doubt the decretal amount awarded by the lower fora(s) is very small, Rs.15,100/- only, they are contesting the RP on law point.

8. It is the case of OP Railways that under the provisions of Section 100 of the Railways Act, 1989, Railways is 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 provides 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), passenger himself is responsible for the safety of his luggage and the Railways cannot be held liable for any loss or damage. OP Railways also contended that there is no allegation that any unauthorized passenger was travelling in the train or TTE has allowed any unauthorized passenger in the train, there is no allegation that 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 (Sr.No.15), there is no allegation that TTE or any Coach attendant was not present in the coach or did not co-operate, neither TTE nor coach attendant was informed about the incident, the complainant was carrying his luggage at his own risk as neither he entrusted the goods to the conductor nor booked the same with Railway Authorities by paying the requisite fee, in the FIR, there is no attribution of any negligence on the part of Railways, so mere allegation of theft does not constitute any deficiency in service on the part of Railway, complainant failed to use the facility of locking his luggage with the

iron rings under the seat, there is no allegation that any railway authority failed to cooperate with the complainant, hence Railways cannot be held negligent, the complainant himself was negligent, the complainant did not give item-wise details of stolen articles. In support of its contentions OP Railways have relied upon various judgments of this Commission and Hon'ble Supreme Court, cited in the preceding para (6.1) of this order.

9. Complainant/Respondent was proceeded ex-parte on account of his absence despite service. Before the lower Fora(s), the complainant had contended that two suitcases of the complainant had been stolen, complainant pulled the train but the train did not stop, on the next station, the complainant reported the matter to the Government Railway Police (GRP) Station, Jhajha, where the luggage was stolen. Complainant had contended that suit cases of complainant contained some gold, cash and clothes worth about Rs.1.00 lakh. Railways were under obligation to provide safety and security of the luggage of passengers but it failed to do so, OP Railways was deficient in service, indulged in unfair trade practices.

10. Lower fora(s) have appropriately and correctly addressed the contentions of OP Railways of District Forum not having territorial jurisdiction, complainant not being a consumer, non-joinder of GRP, etc. and we are in agreement with the observations/findings of lower fora(s) in this regard. State Commission, while dismissing the appeal filed by the OP Railways has observed as follows:

9. The Counsel for the appellant submitted that the District Forum did not have the territorial jurisdiction to entertain the complaint as the theft of the suit cases of the complainant took place on the way from Patna to Kolkota. He further submitted that the complainant did not fall under the definition of a consumer as defined under Section 2(d) of the Consumer Protection Act, 1986. He further submitted that as per Section 100 of the Railways Act, 1989, the Railway is not responsible for the loss, destruction, damage, deterioration or non-delivery of un-booked luggage. He further submitted that the responsibility of the Railways in case of loss etc. of the luggage being carried by the passenger in his charge on the basis of proven negligence or mis-conduct on the part of the Railways applies only in case of booked luggage. He further submitted that the District Forum was wrong in holding that the TTE of the train failed to perform his duties, which amounted to negligence and also deficiency in service, as per codified duties of the TTE. He further submitted that since the complaint related to the offence of theft and the complainant was required to strictly prove that he was carrying the alleged articles with him and the theft occurred due to the negligence of the Railways. He further submitted that the theft took place due to the negligence of the complainant himself. He further submitted that the order of the District Forum, being illegal, is liable to be set aside.

10. After giving our thoughtful consideration, to the submissions, raised by the Counsel for the appellant and the evidence, on record, we are of the considered opinion, that the appeal is liable to be dismissed, at the preliminary stage, for the reasons to be recorded hereinafter. The perusal of the Railway tickets, Annexures C-1 and C-2 shows that the complainant purchased the same from Chandigarh and, as such, a part of cause of action arose to the complainant at Chandigarh. The District Forum, thus, had got the territorial jurisdiction to entertain and decide the complaint. The submission of the Counsel for the complainant in this regard, being devoid of merit is rejected.

11. The next submission of the Counsel for the appellant is that the luggage was not booked with the Railways and since the services of the Railways were not hired by the complainant, therefore, as per Section 100 of the Indian Railways Act, the Opposite Party was not liable and the complainant was not proved to be a consumer under the Consumer Protection Act. It is not disputed that the complainant made the payment of railway tickets for a reserved coach to the Opposite Party and hired its services. The complainant, thus, fell within the definition of a Consumer. The District Forum was also right in holding that the complainant was covered under the definition of a 'Consumer' as defined under the provisions of the Consumer Protection Act, 1986.

12. Since the complainant alongwith his family members was traveling in the reserved coach of the Railways, it was, thus, the duty of the TTE to ensure that no intruder entered the reserved compartment of the Railways. The theft of two suitcases of the complainant took place from a reserved compartment and, therefore, it could not be ruled out that some intruder must have entered the reserved compartment who committed the theft of the suitcases. Had the TTE of the Railways been vigilant and careful then the entry of the intruders/some unauthorized persons must have been prevented in the coach during the night and the complainant did not have to face the mental agony and harassment due to the theft of his suitcases. While holding so, the District Forum rightly placed reliance upon the principle of law settled by the National Commission in Union of India & Ors.Vs. Sanjiv Dilsukhraj Dave & Anr. [2003 CTJ 196 (CP) (NCDRC)]. In this view of the matter, the District Forum was right in observing that the TTE of the train failed to perform his duties, which amounted to negligence and also deficiency in service, as per codified duties of the TTE. Keeping in view the facts and circumstances of the case, we are of the considered view that the District Forum was right in holding that the Opposite Party was deficient in rendering service to the complainant. The order of the District Forum, being legal and valid, is liable to be upheld.

13. The order passed by the District Forum, does not suffer from any illegality or perversity, warranting the interference of this Commission."

11. District Forum while allowing the complaint has observed as follows:

"11. The learned Counsel for the OP has also resisted the complaint on the ground that the luggage was not booked with the railways and since the services of the railways were not hired by the complainant, therefore, as per Section 100 of the Indian Railways Act, the OP is not liable and the complainant is not proved to be a consumer under the Consumer Protection Act. However, we feel that the above arguments are devoid of any force. The complainant made the payment of railway tickets for a reserved coach to the OP and hired the services of the OP. The theft of the luggage of the complainant took place from the reserved coach. According to the provisions of Section 100, the railway administration is not 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 thereof 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. In the instant case, even though the luggage of the complainant was not booked but the circumstances show that the TTE failed to perform his duties, which amounts to negligence and also deficiency in service as per the codified duties of the TTE. The contention of the learned Counsel for the complainant that a passenger is allowed to carry 40 Kgs of luggage on a ticket as per railway rules, has not been repelled by the OP. In this view of the matter, we are of the opinion that the complainant is very well covered under the definition of "Consumer" under the Consumer Protection Act.

12. The next question that arises for determination is whether any theft of the luggage of the complainant took place when he was travelling from Patna to Kolkata on Lal Quila Express train in a reserved coach with his family? The affidavit of the complainant coupled with the copy of the application Annexure C-3 made to Police Station, Railway Police Station, Jhajha, on the basis of which, an FIR was lodged under Section 379 IPC, prove the theft of his two suitcases. The mere fact that there is no evidence that the passenger did not tie or lock his luggage with iron rings under the seat and did not bring the fact of theft to the notice of guard and the attendant of the coach, does not prove that there was no negligence or deficiency in service on the part of OP. The complainant has specifically pleaded in the complaint and has mentioned in the police report that he pulled the chain to stop the train but the train did not stop. The OP has not filed any affidavit of the guard or the attendant of the coach to prove that the complainant did not pull the chain to stop the train. It is evident from the

affidavit of the complainant that after the theft, on the next station he reported the matter to GRP but they asked him to report the matter to General Railway Police Station, Jhajha, where the luggage was stolen and then he reported the matter to the Police Station, Jhajha and a case under Section 379 IPC was registered by them. In Union of India Vs. Dr.(Smt.) Shobha Agarwal (supra), the Hon'ble National Consumer Disputes Redressal Commission placed reliance on the observations in case Union of India & Ors. Vs. Sanjiv Dilsukhraj Dave & Anr. [2003 CTJ 196 (CP) (NCDRC).

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13. Applying the ratio of the above said ruling, in the instant case also since the complainant was travelling in a reserved compartment, he expected that he could enjoy the train journey with a certain minimum amount of security and safety. Since the theft of his two suitcases took place from a reserved apartment it warrants that some intruder entered the reserved compartment and committed the theft. Since apparently there was a failure on the part of TTE to prevent entry of unauthorised person in the coach during the night, therefore, we feel that there was a gross dereliction of duty which resulted in deficiency in service on the part of OP. In the instant case, since the loss was due to the negligence or misconduct on the part of servant of the OP, therefore, the OP is liable for deficiency in service.

14. The last question that survives for determination is as to what were the articles in the stolen suitcases and what was the total loss caused to the complainant. It is significant to note that in the application made to the police Annexure C-3, the complainant simply alleged that the suitcases were containing jewellery, cash and clothes of the value of approximately Rs.1 lac. No details of the jewellery, cash and clothes were given in that application. It has been contended by the learned Counsel for the complainant that the complainant had given the details of the items stolen to the police but the police had only mentioned gold, cash and clothes in their report. However, this contention of the learned Counsel for the complainant cannot be accepted because the application Annexure C-3 is signed by the complainant in Hindi as well as English and he has indicated his designation as ASI at S.V.B. (State Vigilance Bureau), HQ. The complainant being an ASI could not be forced to make an application in the way the police of Police Station, Jhajha wanted. At any rate, even when the complainant filed a complaint before this Forum on 5.11.2013, the details of the jewellery, cash and clothes were not given. It is only in the rejoinder filed on 6.6.2014 that the complainant has mentioned that the gold included two gold bangles and ear rings worth Rs.40,000/- and one gold chain worth Rs.25,000/-, cash of Rs.15,000/- and clothes of Rs.20,000/- approximately. This description has been

given for the first time on 6.6.2014 after the theft of the suitcases on 10.11.2011, therefore, no reliance can be placed upon it. Apart from that, the weight of the jewellery and the details of the clothes have not been given in the rejoinder. No documentary proof of the purchase of the gold, jewellery and winter clothes i.e. sweater, jackets etc. allegedly stolen during the journey has been produced. Merely on the basis of self serving statement of the complainant, it cannot be assumed that the complainant suffered a loss of Rs.1 lac on account of the theft of his luggage. Hence, having regard to the circumstances of the present case, we deem it proper to award an amount of Rs.10,000/- only to the complainant as compensation on account of mental agony and deficiency in service on the part of OP, apart from litigation expenses.”

12. 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.

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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."

13. 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.”

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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."

14. In the present case, there are concurrent findings of both the Fora(s) below against the OP Railways as regards negligence and deficiency in service on the part of the OP Railways. It was on account of lack of evidence on the list of items in the suit-cases and their value, which were stolen that District Forum did not allow the compensation sought towards value of items lost but only a compensation of Rs.10,000/- for mental agony, physical harassment and deficiency in service, along with litigation cost of Rs.5100/-. The State Commission confirmed these findings of District Forum. 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 order of the State Commission, hence the same is upheld. Accordingly, the Revision Petition is dismissed.

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