

(2011) 05 NCDRC CK 0001

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Union of India

APPELLANT

Vs

Savitaben Sumanbhai Patel

RESPONDENT

Date of Decision: May 5, 2011

Citation: 2011 0 NCDRC 259 : 2011 3 CPJ 34

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision petition is dismissed

Judgement

1. THIS revision petition has been filed by the Union of India and another (hereinafter referred to as the Petitioners) aggrieved by the order of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the State Commission) in favour of Mrs.Savitaben Sumanbhai and her three minor children (hereinafter referred to as the Respondents).

2. THE brief facts of the case are that the deceased husband of the Petitioner No.1 was working at Atul Limited as a Helper in District Valsad. On 04.11.2003, he reached the Atul Railway Station to board the passenger train coming from Mumbai to Valsad for which he had a valid ticket No.43668. Since, there was no over-bridge or sub-way at Atul Railway Station, in order to board trains coming from Mumbai, passengers (in this case the deceased) standing on the right side of the platform have no option but to cross the railway track and only then can they board the train for Valsad. On that date because of poor visibility at 6.30 am and because the lights were off at the railway station, the deceased was hit by a goods train while he was crossing the railway tracks to board the train and died on the spot. THE headlights of the goods train were not on and no whistle or signal was given to indicate that it

was passing through the Atul Railway Station. Thus, the goods train driver did not take due care or precaution while driving the train. From the above facts, it is clear that there was deficiency in service and negligence on the part of the Petitioners by not providing an over-bridge or sub-way to approach trains coming from Mumbai and going towards Valsad, and also not providing lighting at the Station in the early hours of the morning. Further, no care or precaution was taken by the driver of the goods train by either switching on the headlights or giving any signal or whistle while passing through Atul Railway Station. As a result of these deficiencies and negligence, the Petitioners husband lost his life at the young age of 43 years and taking into account the annual income of the deceased which was Rs.96,936/- and his contribution of two-third of this towards the upkeep of family (one-third being on himself), he would have annually spent Rs.64,804/- on his wife and children. THEREfore, looking at this sum and the age of the deceased and applying the multiplier of 15, a compensation of Rs.9,72,060/- was warranted. Respondents therefore, issued a notice to the Petitioners to pay this compensation along with Rs.1 lakh as compensation for mental agony, Rs.10,000/- as cost of litigation and Rs.20,000/- incurred in connection with ceremonies and religious rituals. Since, no action on this request was taken by the Petitioners, Respondents filed a complaint before the District Forum seeking the following reliefs:

(i) THE Respondents may be directed to pay Rs.11,02,060/- with running interest at 12% per annum from the date of accident i.e. 04.11.2003 till its realization. (ii) Further and other reliefs as the complainant may be entitled to be granted.

Petitioners denied the above contentions and stated that they are an autonomous body and governed by the Indian Railways Act, 1989 and the Rules made thereunder. Consequently, cases where compensation for personal injury is sought from the Petitioner organisation, these have to be filed before the Railway Claims Tribunal as per the Indian Railways Act, 1989 and the consumer fora do not have the jurisdiction to entertain them. Petitioners also denied that there was any negligence or deficiency of service on their part in the present case. According to the Petitioners, while it is a fact that there is no sub-way at Atul Railway Station since it is a flag station, it is for the passengers to take adequate care at the time of crossing the railway track. Petitioners also stated that it is not true that the goods train driver had not taken due care or precaution by not giving a signal or whistle and not putting on headlights of the train. Therefore, both on merits as well as on the grounds of jurisdiction the complaint deserves to be dismissed. The District Forum after hearing both parties and considering the evidence on record, partly admitted the complaint and directed the Petitioners i.e. Union of India and General Manager(Administration) to jointly and severally pay a sum of Rs.5,50,640/- to the Respondents within 30 days from the date of the order as compensation. On recovery of amount, a sum of Rs.1 lakh be deposited in Fixed Deposit with a Nationalised Bank for a period of 10 years in the name of the Respondents three children.

Aggrieved by this order, Petitioners filed an appeal before the State Commission which dismissed the appeal by ruling that the Petitioners were guilty of deficiency in service as contended by the Respondents and further there is no jurisdictional bar to this case being tried by the consumer fora. So far as the question relating to jurisdiction is concerned, the State Commission cited the following judgments:

(1) 11 (2007) CPJ-116-Karnataka State Consumer Disputes Redressal Commission-Bangalore-South Central Railway & Anr. Appellants V/s Kamalabai & Anr- Respondent (2) 1 (2008) CPJ -13 (NC) Vinaya Vilas Sawant (Smt) Petitioner V/s. Union of India- Respondent.

3. THE State Commission upheld the order of the District Forum in toto. Hence, the present revision petition. Learned counsel for Petitioners and proxy counsel for Respondents were present.

Counsel for Petitioner stated that the fora below erred in not appreciating the fact that the present revision petition does not fall within the purview of the Consumer Protection Act, 1986 and all such cases come squarely within the provisions of the Railway Claims Tribunal Act, 1987. He further stated that earlier decisions including those of this Commission that such cases fall within the purview of the consumer fora is under challenge before the Honble Supreme Court and a decision is awaited.

4. WE have heard learned counsel and have gone through the evidence on record. Petitioners have stated that the orders of the fora below needs to be set aside and the present revision petition is not maintainable on grounds of jurisdiction since it clear that Section 28 of the Railway Claims Tribunal Act, 1987 will have overriding effect vis--vis Section 3 of the Consumer Protection Act, 1986. WE note that the issue of jurisdiction has been comprehensively dealt with in a number of ruling by this Commission including in the case of Vinaya Vilas Sawant(Smt.) Vs. Union of India I(2008) CPJ13(NC) decided on 29.11.2007 and Gulshan Kumar Mendiratta & Ors. Vs.Union of India & Anr. MANU/CF/0198/2010 decided on 03.02.2010. In this connection, it would be relevant to quote the relevant part of the judgment of the then Honble President (M.B.Shah) of this Commission in Vinaya Vilas Sawant (supra) regarding jurisdiction wherein also a passenger was seriously injured while passing over the railway over-bridge:

12. it is to be stated that the provisions of the Railway Claims Tribunal Act, 1987, would not be applicable to the present case because it confers jurisdiction on the Claims Tribunal constituted under the Railway Claims Tribunal Act, for claims for compensation for loss, destruction, damage, deterioration or non delivery of animals or goods, etc.

13. Section 13 of the Railway Claims Tribunal Act, 1987 reproduced below: 13. Jurisdiction, powers and authority of Claims Tribunal.--(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil Court or a Claims Commissioner appointed under the provisions of the Railways Act- (a) relating to the responsibility of the Railway Administrations as carriers under Chapter VII of the Railways Act in respect of claims for- (i) compensation for loss, destruction, damage, deterioration or nondelivery of animals or goods entrusted to Railway Administration for carriage by Railway; (ii) compensation payable under Section 82A of the Railways Act or the rules made thereunder; 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 Section 124A 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 Section 124A of the said Act or the rules made thereunder.] (2) The provisions of the [Railways Act, 1989 (24 of 1989)] and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.

14. In the present case, the loss or injury is caused to human beings, and not to the animals and that it was not acting as a carrier of goods. Once Section 13 is not applicable, there is no question of applying the bar of jurisdiction under Section 15 of the said Act.

15. Apart from this, Section 128 of the Railways Act saves the right of the affected person to recover compensation under any other law for the time being in force. Section 128 reads as under: 128. Saving as to certain rights: (1) The right of any person to claim compensation under Section 124 [or Section 124A] shall not affect the right of any such person to recover compensation payable under the Workmen's Compensation Act, 1923 (8 of 1923) or any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same accident. (2) Nothing in Sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for payment of compensation for death or personal injury or for damage to property or any sum payable under I" any policy of insurance. 16. Further, Section 3 of the Consumer Protection Act, 1986, specifically provides that the provisions of the

Act are in addition to and not in derogation of any other law for the time being in force.

17. Consumer Fora can exercise jurisdiction under the Act in cases when there is no specific bar. In *Kishore Lal v. Chairman, Employees' State Insurance Corporation*, the Apex Court has gone to the extent of saying that if two different Fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated.

It is thus clear from the above that Section 3 of the Consumer Protection Act, 1986 provides additional remedy to the consumer and as such the consumer fora are competent to entertain claims covered and filed under the relevant section of the Railways Act, 1989/Railway Claims Tribunal Act, 1987. In the instant case, the points of law are similar to those in *Vinaya Vilas Sawant*(supra). Therefore, following the above judgment of this Commission as well as a host of other judgments with similar conclusions, we agree with the fora below that the present case is not barred by jurisdiction. So far as the merits of the case are concerned, the fora below based on credible evidence produced before it had concluded that the Petitioners were also guilty of negligence and deficiency in service. In fact, Petitioners themselves have conceded that there was no railway over-bridge available at the Atul Railway Station and that passengers wishing to board the train coming from Mumbai and going towards Valsad would have to cross the railway tracks which at all times can be a hazardous and dangerous proposition. Denial by the Petitioners that the goods train did have lights and gave necessary warning signals while it was transiting the Atul Railway Station has not been proved either through an affidavit of the concerned driver or any other credible evidence.

In view of all the above facts, we uphold the order of the State Commission in toto. The revision petition is dismissed. The Petitioners i.e. Union of India and General Manager(Administration) are directed to jointly and severally pay a sum of Rs.5,50,640/- to the Respondents within 30 days from the date of the order as compensation. On recovery of amount, a sum of Rs.1 lakh be deposited in Fixed Deposit with a Nationalised Bank for a period of 10 years in the name of the three children of the Respondent.