

(2004) 03 NCDRC CK 0124

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

DINESH KUMAR @ DILESWAR

APPELLANT

Vs

RAILWAY STATION MASTER,
RAIPUR STATION

RESPONDENT

Date of Decision: March 25, 2004

Citation: 2004 3 CLT 464 : 2004 4 CPJ 136

Hon'ble Judges: V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision: Appeal dismissed

Judgement

1. THIS appeal, under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 31.5.2000 in Complaint No. 718/1997 by District Consumer Disputes Redressal Forum, Raipur (hereinafter called "District Forum" for short) dismissing the complaint of the complainant/appellant.

2. RELEVANT facts no longer in dispute are : that while the complainant Dinesh Kumar was travelling in a local train from Bhatapara to Raipur on 25.7.1995, the wheel of the bogie in which he was travelling crashed against the floor of the bogie tearing it and come over the floor resulting in injury to one of the legs of the complainant. The complainant claimed damages alleging deficiency in service, on the part of respondent Railway Administration.

The complaint was resisted mainly on the ground that the Consumer Forum has no jurisdiction.

The learned District Forum in the impugned order has held that this was an accident within the meaning of Section 124 of the Railways Act, 1987 (hereinafter called the

"Act") and accordingly held that it had no jurisdiction and the matter could be agitated only before the Railway Claims Tribunal. Accordingly the complaint was returned to be presented before the said Tribunal.

3. THE learned Counsel for the appellant challenged the finding of the District Forum as above. It was submitted that as respondent committed deficiency in service the District Forum had jurisdiction to hear and decide the complaint. However, the learned Counsel for the respondent Railways supported the impugned order and submitted that in view of the specific bar of jurisdiction under Section 15 of Act, the District Forum had no jurisdiction, as has been rightly held by the learned District Forum.

The only question to be decided in this appeal is : as to whether finding of the District Forum that it has no jurisdiction is proper ?

4. IT may be noticed that according to complainant he got injured on account of wheel crashing and coming over the floor of the bogie in which he was travelling. Report of inquiry about the said accident held by the officers of the Railways has also been submitted in the record of the District Forum. IT was stated in the said report that on 25th July, 1995 the train dashed with a 17 ft. long rail piece damaging GUY rod of OHE damaging bogie No. 5645 in which four persons were injured. IT was further stated in the said report that some outsiders removed the rail piece of infringing dimension and lifted it near rail line. IT appears from the said report that the train had collision with rail piece resulting in the accident as above.

It may be noticed that Section 13 of the Act, reads:

"13(1). The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority, as were exercisable immediately before that day by any Civil Court or a Claims Commissioner appointed under the provisions of the Railways Act : (a) Relating to the responsibility of the Railway Administration as carried 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 goods entrusted to a Railway Administration for carriage by railway; (ii) Compensation payable under Section 82-A of the Railways Act or the rule made

there-under; and (b) in respect of the claim 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."

Section 15 of the said Act, imposes bar of jurisdiction of any other Court or authority in relation to the matters to in Sub-section (1) of Section 13. As would be clear from the above Section 13(1)(a)(ii) that it confers jurisdiction on the Railway Claims Tribunal for determination of compensation payable under Section 82-A of the Railways Act, 1890 (old), or/and Section 124 of the Railways Act, 1989, or the rules made thereunder. Section 124 of the Railways Act, 1989, reads : Extent of liability-"When in the course of working a Railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers, or the derailment of or other accident to a train or any part of a train carrying passengers, then, whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration such as would entitled a person, who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the Railway Administration shall notwithstanding any other provision of the law to the contrary, be liable to pay compensation to such extent set out as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passengers and accompanying the passenger in his compartment or on the train sustained as a result of such accident. Explanation-For the purpose of this section includes a Railway servant on duty.

In the instant case, it would appear that the accident occurred as the piece of rail collided with the running train in which the complainant/appellant was travelling. Therefore, accident occurred with the train or part of the train which was carrying passengers including complainant. Therefore, the accident as above would be covered under Section 124 of the Railways Act, 1989. Consequently, Railway Claims Tribunal would have jurisdiction under Section 13 of the Act. Therefore, bar under Section 15 of the Act would come into play and operate against the exercise of jurisdiction by any other authority or Court.

5. THE learned Counsel for complainant/appellant relied upon the case of Union of India & Ors. v. Natmal Hansaria & Anr., I (1997) CPJ 20 (NC)=1997 (1) CPR 133, (NC) decided by the National Commission, to support his contention that the occurrence was not a railway accident. However, in that case death of a passenger occurred while she was passing from one compartment to another, due to absence of grills and other safety devices in the passage joining the two compartments. It was

observed in the said case by the National Commission that such an accident cannot be described as a railway accident. It was further observed that it was a case of an accidental death, but it was not in the said circumstances due to or as a result of a railway accident. However, the fact situation in the present case is entirely different. As noticed earlier, the injury to the complainant was on account of railway accident. Hence, the ratio of the aforementioned case does not lend support to the contention of learned Counsel for appellant.

6. LEARNED Counsel for the appellant also submitted that in view of Section 3 of the Consumer Protection Act, 1986, which provides remedy under the said Act in addition to other remedies it should have been held that the District Forum had jurisdiction to hear and decide the complaint. LEARNED Counsel relied upon the decision of the Supreme Court in Secretary, Thirumugham Cooperative Agricultural Society v. M. Lalitha (Dead) through LRs. & Ors., I (2004) CPJ 1 (SC)=I (2004) SLT 200=2004 (1) CPR 35 (SC). However, it may be noticed that in the said case it was observed that remedy under the Consumer Protection Act, though is in addition to other remedies provided under other Acts, the said remedy is available unless there is a clear bar to such remedy. As noticed earlier, Section 15 of the Act clearly bars the jurisdiction of any other Court or authority. Consequently, the remedy under Consumer Protection Act, 1986 stands barred and is not available to the complainant.

In view of above it appears that the learned District Forum was justified in holding that it has no jurisdiction. The complainant/appellant, however, would have the liberty to avail of such other remedy, including under the Act, as may be available to him. The appeal is dismissed with the observation as above. Appeal dismissed.