

**(2010) 04 NCDRC CK 0043**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Rakesh Patralekh

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** April 19, 2010

**Citation:** 2010 2 CPJ 234

**Hon'ble Judges:** K.S.Gupta , R.K.Batta J.

**Final Decision:** Complaint dismissed.

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**Judgement**

1. MR. Justice K.S. Gupta, Presiding Member-Complaint has been filed, inter alia, alleging that Dr. Prof. Kameshwar Patralekh, father of the complainant along with his wife Anjana Patralekh boarded TATA PNEB Express bearing train No. 8183 at Jasidih Railway Station on 24th October, 2009 having reservation upto Patna in AC chair car. Train was running two hours late. Due to Chhat Puja, vendors were not at the platform and shops at the railway station were closed. Father of the complainant went out to purchase biscuits. After purchasing biscuits when he was boarding the train, it suddenly moved with a heavy jerk. Father of the complainant fell in between the track and his left leg was cut below knee. Railway staff did not bother to stop the train by pulling chain. Railway hospital was just about 20-30 metres away from the accident site. When the father of the complainant was moved to the Railway Hospital, Mokama, he had excessive bleeding because of which he died. ASI, Babu Lal prepared the report for being sent along with the body for post-mortem. Attributing negligence, total amount of Rs. 2,84,40,000, the break-up whereof is given in para 26 of the complaint, has been claimed against the Union of India, Ministry of Railways, New Delhi; Railway Board; DRM/Sr. DPO (SG/IRPS), Danapur; Railway Medical Officer, Mokama and SHO, Mokama Rail Police, Patna District, Bihar.

2. SINCE we have been of the prima facie, view that the present complaint is not maintainable under the Consumer Protection Act, 1986 (for short "the Act"), we have heard Mr. R. Venkataraman for the complainant on admission.

3. UNTOWARD incident" has been defined in Clause (c) of Section 123 of the Railways Act, 1989 as under: "Untoward incident" means-

(1) (i) the commission of a terrorist act within the meaning of Sub-section (1) of Section (3) of the Terrorist and Destructive Activities (Prevention) Act, 1987 (28 of 1987); or (ii) the making of a violent attack or the commission of robbery or dacoity; or (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or (2) the accidental falling of any passenger from a train carrying passengers.]

4. SECTION 124A of the said Act which too is material, reads thus: 124A. Compensation on account of untoward incident-When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

(a) suicide or attempted suicide by him; (b) self-inflicted injury; (c) his own criminal act; (d) any act committed by him in a state of intoxication or insanity; (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Explanation-For the purpose of this section , "passenger" includes- (i) a railway servant on duty; and (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an

untoward incident."

5. SECTIONS 13 and 15 of the Railway Claims Tribunal Act, 1987 further need be referred to and the same run as under-

"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 non-delivery of animals or goods entrusted to a 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. [(1A) 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. 15. Bar of jurisdiction-On and from the appointed day no Court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in [Sub-sections (1) and (1A) of Section 13".

6. ON a conjoint reading of the provisions contained in aforesaid Sections 123(c), 124A of the Railways Act, 1989 and 13 and 15 of the Railway Claims Tribunal Act, 1987 would show that on establishing of Railway Claims Tribunal, any claim for "untoward incident" payable under Section 124A by the Railway Administration shall be entertained only by the Tribunal and no Court or other authority including the Consumer Forums shall have, or be entitled to exercise jurisdiction, powers or

authority in relation to such claim. Obviously, present complaint is not legally maintainable before this Commission. In view of the bar of jurisdiction created by said Section 15, the decisions in F.A. No. 2209 of 2004, Smt. Vinaya Vilas Sawant v. Union of India, of this Commission and in Kishore Lal v. Chairman, Employees' State Insurance Corporation, (2007) 4 SCC 579, on which reliance has been placed will not be of any help to the complainant. Impleadment of the Railway Medical Officer and SHO, Mokama Rail Police as opposite party Nos. 4 and 5 will not make any difference as in substance the claim made is in respect of untoward incident which is entertainable only by the Railway Claims Tribunal. Complaint is, therefore, dismissed being not maintainable under the Act. Complaint dismissed.