

**Udyog Sadan Qutub Institutional Area New Delhi-16
Heading2**

**Complaint Case No. CC/307/2017
(Date of Filing : 21 Sep 2017)**

1. NAVEEN KUMAR

R/O VILLAGE POST OFFICE SHIMLA, TEH KHETRI, Dist.
JHUNJHUNU, RAJASTHAN

.....Complainant(s)

Versus

1. NORTHERN RAILWAYS

BARODA HOUSE, NEW DELHI

.....Opp.Party(s)

BEFORE:

**Monika Aggarwal Srivastava PRESIDENT
Dr. Rajender Dhar MEMBER
Ritu Garodia MEMBER**

PRESENT:

Dated : 05 Apr 2024

Final Order / Judgement

CONSUMER DISPUTES REDRESSAL COMMISSION – X

GOVERNMENT OF N.C.T. OF DELHI

Udyog Sadan, C – 22 & 23, Institutional Area

(Behind Qutub Hotel)

New Delhi – 110016

Case No.307/2017

NAVEEN KUMAR

S/O SH. SAWAI SINGH

R/O VILLAGE+ POST OFFICE SHIMLA THE KHETRI

DIST. JHUNJHUNU, RAJASTHAN.....COMPLAINANT

Vs.

NORTHERN RAILWAY

BARODA HOUSE, NEW DELHI

THROUGH ITS

GENERAL MANAGER.....RESPONDENT

Date of Institution-21.09.2017

Date of Order- 05.04.2024

ORDER

DR. RAJENDER DHAR-MEMBER

The complaint pertains to loss of damage while travelling in train.

The complainant was travelling in CG Sampark Kranti Superfast Express Train No. 12823 vide PNR No. 6459841951, Coach No.S5 berth/seat no. 24 from Raipur to Nizamuddin on 05-01-2017 at 12:30PM.

On 06.01.2017, train crossed the Tughlaqabad Station and complainant went to washroom in the train compartment near okhla station and returned to his seat/ berth and he found that his bag containing silver black colour laptop i.e. Dell Inspiron 3543 i3 Generation Vide STN No.6Q0ND32 for amount of Rs.34,900/- along with laptop charger, mobile charger, Dhariwal Loi/ blanket, Dida Track Suit, lunch pack and daily uses articles were stolen. The complainant searched his goods/ articles but there was no passenger in the compartment. However, he informed a passenger who was setting at seat no.15 who got down in Okhla.

It is further submitted by the complainant that he informed Nizamuddin Railway Police on the same day and time and requested to register FIR but they misguided him and they gave him lost report LR No.0005/2017 on 06.01.2017 at 2PM.

On 07-01-2017, the complainant requested SHO, IO and Duty Officer to register a supplementary FIR but they misguided him and informed him that luggage lost report is not given any receiving and thereafter, complainant mailed a supplementary copy to SHO Railway, Nizamuddin on 11-01-2017 but to no avail.

It is further submitted by the complainant that he took up the matter with Dell Inspiron on 12-01-2017 and requested them to block services so that laptop data is not misused. The complainant submitted original copy of lost report and Dell inspiron informed to Dell Authorised Service Centre.

Complainant also took up the matter with McAfee Antivirus support team on 12.01.2017 and informed them to block the services.

It is further submitted that complainant also made complaint to CMOS with reference no. A/SB/R/000201236 and they replied that they had forwarded this issue to RPF Inspector Nizamuddin told him to meet GRP SHO, Nizamuddin but to no use.

Complainant also filed hand written complaint on 28-02-2017 regarding inaction of railway authority as well as GRP authority but to no avail. Complainant also mailed to Commissioner of Police, New Delhi and he informed Jt. CP and DCP vigilance department as to why the FIR is not been registered till date. Later on FIR No.72/2017 U/s 39 IPC was registered on 08.03.2017.

Complainant received an Untraced Report dated 05.09.2017 which mentioned as no clue.

The details of losses mentioned in complainant are as under:-

- A. *Laptop worth of Rs.34,900/-*
- B. *Dida Track Suit Worth Rs.1700/-*
- C. *Dariwall Loi Worth Rs.1300/-*
- D. *Mobile Charger Worth Rs.250/-*
- E. *Daily User Article worth of Rs.500/-*
- F. *Eatable goods worth Rs.200/-*
- G. *Laptop bag worth Rs.1500/-*
- H. *Physical torture including railway fair and transportation in terms of money Rs.40,000/-*
- I. *Mental harassment and torture Rs.60,000/-*

Complainant has further stated that in addition to loss there has been deficiency on the part of railways in providing the services. He has further stated that owner of the laptop is his wife namely Mrs. Munesh Yadav.

Complainant prays for an amount of Rs.1,10,000/- as compensation, Rs.1,00,000/- as compensation for deficiency in services and unfair trade practice, and causing mental agony and torture and an amount of Rs.25,000/- as legal expenses.

OP has stated in its reply that the complaint is totally misconceived and bad in law is liable to be dismissed with costs. It has further submitted that complainant purchased a ticket from IRCTC which does not control the northern railways as well as on this account alone the present complaint against northern railways is not maintainable. The complainant is a consumer of IRCTC. Complainant has also filed an FIR which is dealt under the provisions of IPC-1873.

OP has also stated that the allegations of the complainant warrant investigation, enquiry and trial. Therefore, the consumer complaint is not maintainable.

OP has further stated that as per precedents set by Hon'ble NCDRC and Hon'ble Supreme Court, the complainant is responsible for security of his own luggage. Therefore, present complaint is liable to be dismissed for mis-rejoinder. They have also quoted Section 100 of Railways Act 1989 which states that "*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 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.* "

OP has further stated that railway administration is responsible for issuing the ticket, and taking the passengers to the destination and not for unbooked luggage/ personal belongings

of passengers.

OP has further quoted that as per Provisions 506.2 of Coaching Tariff Clause Act *“article taken into the carriage are at the entire risk of the owner”*.

OP has further reiterated that Railway Administration is not agreeable for loss of any article unless the same is booked and receipt for the same is given by their clerk or agencies. Hence, the complainant is devoid of merit and deserves to be dismissed. Complainant is also not covered within the definition of Consumer Protection Act.

OP has further stated that the luggage of the complainant was not booked with railways and no amount was paid by him. The complainant only had paid the journey amount, therefore, also the complaint does not have fall under the purview of the Consumer Protection Act. OP is not liable for loss of unbooked luggage.

In this case luggage was not booked and no help was sought from railways for carrying it. OP has also contended that while the complainant went to washroom which meant that the luggage was unattended and uncared for. Complainant has not filed any proof of payment of the luggage with railways. OP has also taken objection on the issue of jurisdiction. OP has again reiterated that the issue/ complaint is criminal in nature and is to be dealt exclusively under the Provisions of IPC-1873.

Railway police is only responsible for law and order and is under State Government. OP in parawise reply has repeated its contentions and have also stated that this is totally a negligent act on the part of the complainant and not that on railways since he left his luggage/ articles unattended insecured for a while when he went to the washroom. Matter/ complaint to be dealt under the provisions of IPC-1873.

OP has also stated that it does not have any jurisdiction on criminal matters. In the end OP has prayed that the complaint be dismissed with heavy cost against the complainant.

In the rejoinder the complainant has mentioned that OP has partially admitted his claim/ complaint and has also stated that he purchased the ticket from IRCTC since he has filed an FIR against loss of laptop and other articles whole travelling by railways, so railways is fully liable and responsible for safety of passenger and also goods/ articles.

NCDRC has also given judgments wherein railways have been held responsible for the loss of luggage of the passenger travelling by train. Complainant has denied the contentions of OP and has reiterated that it is the responsibility of Railway Administration to take care of the passenger and his luggage. Other paras have been denied and the complainant has reiterated his complaint.

Complainant has filed evidence by way of affidavit and has exhibited the following documents:

- i. Complaint is exhibited as Ex.CW-1/A.
- ii. Copy of FIR No.72/2017 are exhibited as Ex. CW-1 to 12.
- iii. Copy of RTI, Copy of FIR form, Copy of untraced report, copy of cartoon cover of laptop and copy of laptop bill are exhibited as Ex.CW-13 to 17.

OP also filed evidence by way of an affidavit but has not exhibited any document.

Complainant in his written argument has reiterated the complaint. Written argument was also filed by OP, OP has also reiterated what they have stated in their written statement.

Complainant has filed a judgment of Hon'ble Supreme Court in ***Union of India vs M/s. Udho ram & sons 1963 AIR 422, 1963 SCR (2) 702*** dated 01.05.1962 the Apex court has upheld the decision of the Hon'ble High court in which Hon'ble High Court has held that the loss took place due to negligence of the railway servants, consequently, of the railway administration, the appeal was dismissed.

Hon'ble State Consumer Disputes Redressal Commission, West Bengal in ***The eastern railway vs. Naushad Khan*** dated 28.07.2017 has also held that railway is responsible for security and safety of lives of passengers and also personal belongings. The appeal was allowed.

OP has filed judgment of Hon'ble National Consumer Disputes Redressal Commission dated 02.11.2017 in revision petition titled as ***Union of India & Anr. Vs. Lakshit Joshi***. Vide the said order revision petition was allowed by NCDRC and order dated 21.09.2015 of the Hon'ble State Commission as well as order dated 02.06.2012 passed by the District Forum were set aside and the complaint was dismissed.

OP has also filed judgments of Hon'ble Supreme Court in the matter titled as ***Vijay Kumar Jain Vs. Union of India & Anr. Petition(s) for Special Leave Petition to Appeal (Civil) No.34738-34739/2012*** dated 02.07.2013 and also judgment of Apex court in the matter of ***Station Superintendent & Anr. Vs. Surender Bhola Civil Appeal No. 7116/2017*** dated 15.06.2023. Both these judgements have been perused carefully and it has been observed by Hon'ble Supreme Court that the complaint of the complainant regarding loss of his luggage is not due to the negligence on the part of railways. It has also been observed by Hon'ble Supreme Court that the complainant has negligently placed his luggage on his berth and the District Forum relied upon provisions of the Railway Act, 1989 which also stated that railway cannot be held responsible for the goods which are not booked.

The said Special Leave Petition also stated that the petitioner/ complainant voluntarily placed his luggage/ attachi on his berth. Therefore, the railways cannot be held responsible for the alleged loss of luggage/ attachi by way of theft or otherwise, the SLP was dismissed.

The Apex Court in ***Civil Appeal No. 7116/2017 titled as Station Superintendent & Anr. Vs. Surender Bhola*** has observed that "*respondent was carrying Rs.1 lakh in cash in a belt tied around his waist, the same got stolen and as such the Railways should reimburse the said loss. The District Consumer Forum allowed the same by awarding Rs.1 lakh to be paid by the appellant(s). The State Consumer Disputes Redressal Commission dismissed the appeal (s). 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. Accordingly, we allow the appeal and set aside the orders passed by the National Consumer Disputes*

Redressal Commission, State Consumer Disputes Redressal Commission and the District Consumer Forum.

In this case also complainant had placed his belonging/ luggage containing silver black colour laptop i.e. Dell Inspiron 3543 i3 Generation Vide STN No.6Q0ND32 along with laptop charger, mobile charger, Dhariwal Loi/ blanket, Dida Track Suit, lunch pack and daily usable articles on his seat and went to washroom, during this period his luggage remained unattended and when he returned from the washroom he found that his luggage/ items were missing. Complainant has also mentioned in his complaint that there was no passenger in the compartment at that point of time and goods/ articles were also not booked with Railways.

Considering the judgment of Apex Court in similar matter wherein it has been held that passenger is responsible for the safety of his luggage/ goods/belongings during transit and not the Railways. Therefore, the goods/belongings remained unattended do not amount to deficiency in service on the part of the Railways. Therefore, this Commission is of considered view that the present complaint is devoid of any merti and is dismissed accordingly.

Order to be uploaded on Confonet. File be consigned to record room.

[Monika Aggarwal Srivastava]
PRESIDENT

[Dr. Rajender Dhar]
MEMBER

[Ritu Garodia]
MEMBER