

## Shailendra Jain vs Union Of India on 9 April, 2025

\$~

\*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 22.01.2025

Pronounced on: 09.04.2025

+

CM(M) 3564/2024 & CM APPL. 59059/2024 (Stay)

SHAIENDRA JAIN

.....Petitioner

Through: Mr. Adtiya Jain, Mr.

Desam Sudhakar Reddy

& Ms. Sarika S., Advs.

versus

UNION OF INDIA

.....Respondent

Through:

Mr. Rajesh Kumar, SPC

with Mr. Aakash Kukmar

Singh, GP, Mr. Rahul

Kumar Sharma & Mr.

Yash Narain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This is a petition under Article 227 of the Constitution of India, seeking to set aside the order dated 29.08.2024, passed by National Consumer Disputes Redressal Commission ["NCDRC"] in Revision Petition No. 2272/2023, titled as "Union of India Vs. Shailendra Jain"

and for restoring the order dated 01.03.2023, passed in FA No. 17/2015 by State Consumer Disputes Redressal Commission ["SCDR"], enhancing the compensation to the petitioner to the tune of Rs. 1,00,000/-.

CM(M) 3564/2024 16:16:56

2. The brief facts are that on 16.01.2013, petitioner boarded a train from New Delhi Railway Station to travel to Nagpur, in which, he had reserved a berth in 3rd AC Coach.

3. When the train left Bhopal Station, petitioner discovered that his backpack, containing laptop, camera, charger, eye glasses and ATM Cards issued by SBI and PNB worth Rs. 84,450/- was stolen.

4. Petitioner informed this to the Coach Attendant but he was rude and used rough language and asked him to instead approach the conductor. However, the Conductor was untraceable and even the RPF or GRP personnels were not available.

5. Petitioner lodged an FIR dated 17.01.2013 under Section 379 IPC with GRP, Nagpur Station.
6. Petitioner then filed a complaint before Delhi Consumer Forum bearing Case No. CC/627/2013, claiming Rs. 84,450/- for the loss of goods, Rs. 1 lakh on account of harassment and Rs. 20,000/- towards cost of litigation.
7. Learned District Forum vide order dated 18.12.2014, held the respondent to be deficient in service and awarded Rs. 5000/- as compensation to the petitioner for harassment. Relevant part of the order passed by the District Commission reads as under:-

"Coach attendant, Conductor, GRP personal were all found missing or sleeping, which resulted in theft of luggage of passengers. This is a common problem faced by numerous passengers and railways cannot absolve itself of its own liability by shifting the blame on different departments and state police. The ticket fare paid to railways makes its accountable for safe and complete journey of passengers from point of boarding to the point of embankments. Such incidents in running train tantamount to imperfection in services we award Rs.5,000/- to complainant as CM(M) 3564/2024 16:16:56 compensation for harassment and mental agony and litigation expenses."

8. Aggrieved by the aforesaid order of the District Commission, petitioner filed First Appeal No. 17/2016 before the learned SCDRC for enhancement of compensation. The SCDRC vide order dated 01.03.2023, allowed the appeal and modified the order passed by District Forum. The operative paras of the said order reads as under:-

"6. It is clear from the record that the coach attendant, conductor, GRP personal were found missing or sleeping during the course of journey and the said fact is also evident from Annexure-E/l(a) and Annexure E/1(b) of the present appeal. It is also clear from the order no. 98/TG-V/12/1 dated 11.09.1998 issued by Ministry of Railway that the train conductors 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. However, in the present case, the train conductor was found to be negligent or not available during duty hours. Therefore, there is gross negligence on the part of the Railway in providing its services to the Appellant.

8. In view of the aforesaid discussion, we modify the judgment dated 18.12.2014 passed by District Commission-VI, Vikas Bhawan, I.P Estate, New Delhi -110002 to the extent that the Respondent is directed to pay Rs. 1,00,000/- for the loss of articles due to negligent act of the Respondent, harassment & mental agony suffered by him and the cost of litigation. The rest of the contents of the judgment dated 18.12.2014 remains unchanged."

9. Feeling dissatisfied by the order of the SCDRC, respondent preferred Revision Petition before NCDRC. The NCDRC vide order dated 29.08.2024, set aside the finding in order of the learned

District Forum and the learned SCDRC and dismissed the complaint of the petitioner.

10. It is this order, which has been challenged in the present petition by the petitioner.

CM(M) 3564/2024 16:16:56

11. Learned counsel for the petitioner submits that the train was unmanned when it arrived at Nagpur Station and no TTE was present in the train, and therefore, this is clearly a case where the loss was due to the fault of railway officials as a Notification dated 11.09.1998 issued by Ministry of Railways, Government of India, which provides a duty list of Train Superintendents clearly states at point 20 as under:-

"20. He should ensure that the sleeper coach TTEs and Coach Attendants follow the standing instructions regarding the securing and latching of the doors on run and at stations and also closing a bolting the vestibule doors at night time are scrupulously observed by his staff."

12. Learned counsel also places reliance on the points No. 11 & 12 in the Duty List, which provides as under:-

"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 vestibuled coach locked during 22.00 hours to 06.00 hours to prevent unauthorized entry"

13. It is submitted that the duty list makes it amply clear that in the present case, there was negligence on the part of the TTE/Conductor as the train arrived unmanned at Nagpur Railway Station.

14. It is also submitted that the negligence and failure of duty on the part of the railway officials is also evident from the fact that the Coach Attendant refused to provide assistance, Conductor was untraceable and no RPF or GRP personnel was available to handle the situation. According to the petitioner's counsel, such misconduct and negligence by the railway officials directly caused loss of the petitioner's backpack.

15. It is further submitted that the National Commission in several CM(M) 3564/2024 16:16:56 cases under similar circumstances has deemed it as "deficiency of service" and granted compensation and damages etc. In this regard, reliance has been placed on the decisions of National Commission in the cases of Northern Railway Vs. Balbir Singh, MANU/CF/0924/2024 and Union of India & Ors. Vs. Daya Shankar Tiwari & Ors. MANU/CF/0931/2024.

16. Per contra, learned counsel for the respondent submits that there is no allegation that any unauthorized passenger was travelling in the train or Attendant or TTE permitted any unauthorized

passenger in the reserved coach. It is further submitted that 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 the Notification dated 11.09.1998. It is further submitted that under the Provisions of Section 100 of the Railways Act, 1989, Railway is not responsible for theft/loss of un-booked luggage. It is submitted that Rule 146 of the Coaching Tariff No. 24 (Part-1), (Vol. 1), states that Railway cannot be held responsible for the loss of any un-booked luggage, Rule 500 of the Tariff provides that all the articles taken into the carriage, are carried at the entire risk of the owners and 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.

17. It is further submitted that for the security of the personal belongings of the passenger, Railway provides strong iron rings under the seat so that the passengers can tie or lock their luggage with the CM(M) 3564/2024 16:16:56 rings. It is submitted that if the petitioner had used the rings to tie and lock his backpack, theft could not have taken place. Petitioner himself was therefore negligent for the loss suffered by him.

18. Learned counsel further submits that the backpack and its contents have not been proved and no evidence has been adduced to prove that petitioner had even brought the backpack in the compartment. It is argued that the passenger carrying valuables with him, needs to be more vigilant to take care of his belongings by taking necessary safeguards by locking their bags with iron rings. In this case, petitioner has failed to do so, and therefore, respondent cannot be fastened with any liability on mere allegation of theft.

19. It is an undisputed position, as also noted in the impugned order by the National Commission that the backpack was neither booked nor registered with the Railways. Admittedly, the goods in the backpack were not declared prior to the journey. Petitioner was carrying his personal baggage, which he had not declared.

20. A perusal of the Consumer Complaint (Annexure-G) reveals that the claim for deficiency of service is mainly based on the fact that the Attendant was sleeping and was rude and the Conductor was not traceable. There is not even a whisper in the complaint that the doors of the coach were lying open due to the negligence of the Coach Attendant or Conductor or that due to the same, some unauthorized intruder entered into the coach and committed theft. No doubt, as per list of duties, the Conductor should ensure that the doors of the coach are locked. There is not even a whisper that the doors of the coach were lying open, which may have resulted in unauthorized intrusion CM(M) 3564/2024 16:16:56 by an intruder to commit theft. There has to be a reasonable nexus between the commission of the theft and the negligence of duty by the Conductor and the Attendant. The mere absence of the Conductor from the coach per se may not amount to deficiency of service, in the absence of any specific allegation that he had not duly performed the duty by keeping the doors closed. There is no allegation or evidence in the present case or even an assertion in the complaint that any unauthorized person had entered the train. There is nothing on record to suggest that the theft could not have been carried out by some co-passenger on board. If that was so, even the presence of the Conductor in the train would have been of no help.

21. No doubt, there are conflicting decisions rendered by the NCDRC with regard to the liability of Railways in the matter of theft of property during train journeys against reserved seats, but Hon'ble Supreme Court in the case of Station Superintendent Vs. Surender Bhola, 2023 SCC On-line SC 741, while dealing with a similar case held that if a passenger is not able to protect his own belongings, the Railway cannot be held responsible. The relevant paras of the judgment read as under:-

"4. 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.

5. Accordingly, we allow the appeal and set aside the orders passed by the National Consumer Disputes Redressal Commission, State Consumer Dispute Redressal Commission and the District Consumer Forum."

22. Drawing from the aforesaid judgment of the Hon'ble Supreme CM(M) 3564/2024 16:16:56 Court, it is abundantly clear that a passenger, carrying his own luggage with him in compartment, is himself responsible for its safe keeping and Railways are not liable for any loss therein due to theft unless it is a case of theft on account of negligence or misconduct of the railway officials.

23. That being the position of law, this Court finds no perversity or impropriety in the impugned judgment dated 29.08.2024 passed by the NCDRC.

24. There is no merit in the petition. Petition is accordingly dismissed.

RAVINDER DUDEJA, J.

April 9, 2025 RM/r CM(M) 3564/2024 16:16:56