

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 440 OF 2022

(Against the Order dated 19/04/2022 in Complaint No. 125/2017 of the State
Commission Telangana)

1. UNION OF INDIA

OWNING SOUTH CENTRAL RAILWAY,
REPRESENTED THROUGH GENERAL MANAGER,
RAIL NILAYAM,,

SECUNDERABAD-500071

.....Appellant(s)

Versus

1. VENNAPU PRASADA RAO

S/O. SRI VENNAPU SATYA RAO, R/O. H NO. 14-
1309, N.K. RAJAPURAM, PALAKONDA-5324440,
DISTRICT-SRIKAKULAM,

DELHI-110024

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM
MAURYA, PRESIDING MEMBER**

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

FOR THE APPELLANT : MS. ANUSHKA ARORA, SR. PANEL ADVOCATE FOR
UOI

FOR THE RESPONDENT : MS. RENUKA SAHU, AOR WITH
MR.SHUBHAM BHATIA, ADVOCATE

Dated : 21 August 2024

ORDER

1. Heard Ms. Anushka Arora, Sr. Panel Advocate, for the appellant and Ms. Renuka Sahu, Advocate, for the respondent.
2. The opposite party has filed above appeal from the order State Consumer Disputes Redressal Commission, Telangana at Hyderabad dated 19.04.2022 passed in CC/125/2017, partly allowing the complaint and directing the appellant to pay Rs.1000000/- with interest @9% per annum, as the compensation for the injury and Rs.20000/- as litigation costs, to the complainant.

3. Vennapu Prasada Rao (the respondent) filed CC/125/2017 for directing the appellant to pay (i) Rs.2000000/- as compensation for the injury and consequent physical and mental pain suffered by him and his family; (ii) litigation costs; and (iii) any other relief which is deemed fit and proper in the facts and circumstances of the case.

4. The complainant stated that he was a student of B. Com. Computer, Second year in Dr. C.L. Naidu Degree College, Palakonda, Srikakulam district, Andhra Pradesh. In May/June, 2016, the complainant went to Hyderabad to attend a crash computer courses and also to meet his relatives. After spending few days with the relatives, he purchased railway ticket No.D98626897 of Train No.12806 Janmbhoomi Super Fast Express on 05.06.2016 around 5:00 AM, from Secunderabad to Visakhapatnam and was boarded in general compartment of the train and occupied window seat. When the train reached near Tippiarthy Railway station, an iron bolt stuck on his left eye in a very high speed and caused a grievous injury. The complainant screamed for help. The fellow passengers tried to contact with Ticket Examiner/Train attender but none was available. The passengers tried to stop the train by pulling Alarm chain but it was not functioning. The passengers contacted Railway authorities on their cell phone and informed about the incident. After some time, the train reached Miryalguda Railway station, where the train was stopped. The passengers informed the driver and guard of the train and railway authorities at the station. The officers visited the complainant and looked at his pathetic condition. Instead of taking prudent decision, took out the complainant from the train and gave signal to the train instead of arranging for medical aid although the complainant informed them to bear medical expenses. Even the Railway authorities did not make announcement for medical help. At his frantic call, the official attending him asked “who will pay for your medical expenses”. The complainant replied that he would pay and asked to take his gold chain for it. Although the complainant was in extreme pain with continuous profuse bleeding but he was left in lurch for hours. After departure of the train, they called for an ambulance and on arrival of ambulance, they boarded the complainant in it and send to TSVVP Area Hospital, Miryalguda instead of any Eye Hospital, who referred the complainant to Sarojini Devi Eye Hospital, Hyderabad. By the time, the complainant reached to Sarojini Devi Eye Hospital, he lost complete vision of his left eye and his left eye was enucleated. At present, lot of strain is generated on the other eye coupled with medication and the human anatomy and the vision of right eye is also impaired to a great extent. Due to loss on left eye he has suffered with disfigure for whole life. He has lost chance of marriage. The education of the complainant has been affected , which minimise the

chance of job. Had the opposite party maintained the train and bogies and bolt could not be unfastened and swing like a bullet and hit the complainant. After injury, the railway authority did not take proper care and caused unreasonable delay in providing medical help, which resulted in loss of left eye permanently. The complainant gave a legal notice dated 01.08.2016, calling upon the opposite party to pay Rs.20/- lacs as compensation. In spite of service of the notice, the opposite party has neither replied and gave compensation. On these allegations, the complaint was filed on 29.06.2017.

5. The appellant filed its written reply and contested the complaint. The appellant stated that incident had occurred when the train reached near Tipparthi railway station. Loco Pilot gave message to station master, Miryalguda railway station on walkie talkie as there was no stoppage of the train at that station. The station master called for an ambulance at 108 service. As soon as, the train reached Miryalguda railway station, the complainant was sent to TSVVP Area Hospital, Miryalguda in the ambulance, where first aid was provided and he was referred to Sarojini Devi Eye Hospital, Hyderabad. Ambulance staff was with the complainant throughout. The complainant was shifted to Sarojini Devi Eye Hospital, Hyderabad in the ambulance. It has been denied that an iron bolt hit the complainant or the injury was caused due to negligence of the opposite party. It has been denied that any body asked the complainant for the medical expenses. The incident was accidental and not due to any deficiency in service on the part of the opposite party. Since the complainant was travelling in a day journey in general compartment as such train attender may not be in the train. Railway Claims Tribunals have been constituted under the Railway Claims Tribunal Act, 1987, which have been conferred jurisdiction for any claim against the railways. Section 15 of the Act bars the jurisdiction of any other forum as such the complaint is not maintainable. The compensation is payable under Section 124 & Section 124-A of the Railways Act, 1989. The complaint raises complicated issue of fact, which required cross-examination of the witness, which is not possible in summary jurisdiction of the Commission. The complaint is liable to be dismissed.

6. The complainant filed Evidence by way of Affidavit of Vannapu Prasad Rao and documentary evidence. The opposite party filed Evidence by way of Affidavit of B.V. Ram Prasad and documentary evidence. State Commission, after hearing the parties, by the impugned order held that consumer commission exercise jurisdiction in addition and not in derogation of any other tribunal as such the complaint is maintainable. The complainant sustained injury in his left eye while he was travelling in the train and due to that injury he had lost his left eye.

Although under the Railways Act, 1989, maximum compensation is Rs.8/- lacs but it does not bar for awarding compensation in the other heads. On these finding the complaint was partly allowed and order as stated above was passed. Hence the opposite party has filed this appeal.

7. We have considered the arguments of the counsel for the appellant and examined the record. The finding of the State Commission that the consumer commission exercises jurisdiction in addition to and not in derogation to any other law and Section 15 of the Railway Claims Tribunal Act, 1987, does not bar the jurisdiction of Consumer Commission does not suffer from any illegality. Similarly findings that the complainant received injury in his left eye and lost his left eye during his train journey also does not suffer from any illegality and no interference is required in these respects.

8. However, State Commission is not justified in saying that a person is entitled to more compensation, depending upon the fact of the case than the compensation as provided under the Railway Accident and Untoward Incidents (Compensation) Rules, 1990. Section 124 of the Railways Act, 1989 is quoted below:-

“Section 124. *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 entitle a passenger who has been injured or has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.—For the purposes of this section “passenger” includes a railway servant on duty.”

9. Section 124 of the Railways Act, 1989 has an overriding effect as such the compensation is payable as provided under the Railway Accident and Untoward

Incidents (Compensation) Rules, 1990. The counsel for the appellant has produced Schedule of the Rule, 1990, in which for loss of one eye without complications the other being normal is Rs.320000/-. Although the complainant has stated that his right eye has also been affected but no evidence has been produced. Only left eye of the complainant has been enucleated in the accident dated 05.06.2016 as such the complainant is entitled for compensation of Rs.320000/-.

ORDER

In view of aforesaid discussions, the appeal is partly allowed. The order State Consumer Disputes Redressal Commission, Telangana at Hyderabad dated 19.04.2022 passed in CC/125/2017, is modified and the appellant is directed to pay Rs.320000/- with interest @9% per annum, from the date of accident till the date of payment. Cost awarded by the State Commission is upheld.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER