

# National Judicial Academy



## REPORT

### *Seminar for Members of Railway Claims Tribunal [SE-14]*

21<sup>st</sup> & 22<sup>nd</sup> April, 2018

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## **PROGRAMME REPORT**

*Sumit Bhattacharya\**

### **Program Objective**

The objectives of the National Seminar was to visit the charter of the Railway Claims Tribunal (hereinafter RCT) within the framework of the enabling legislation; as a welfare jurisprudence under the Railways Act, 1989. Also, to discuss relevant topics *viz.* strict and contingent liability as mandated by legislative provisions and expounded in conventions and precedents; to deliberate on components of decision making process; scope, limits and exercise of discretion; study the mechanisms and standard operation procedures to ascertain the genuineness of claims; audit the rate of disposal of cases, causes for delay in disposal and evolve methodologies for speeding up adjudication alongside improving the quality of decision making. Sessions provided a forum for Members to exchange views, improve the knowledge curve and in the identification of best practices in adjudication at RCT.

The two-day National Seminar for the Members of the RCT on 21<sup>st</sup> and 22<sup>nd</sup> April, 2018 was attended by the Judicial and Technical Members of the RCT. The seminar served as a common platform for the members to air their views and concerns about their day-to-day working and explore appropriate strategies for expeditious resolution of claims in RCT. The thematic areas covered in the seminar included issues like- Jurisdictional Charter of RCT, statutory interpretation of some of the key concepts such as untoward incident, self-inflicted injury and criminal act etc., overview of railway accidents and claims, norms of strict liability, components of decision making. The seminar also discussed on the need for adopting a non-litigative approach under the superintendence of RCT, methodologies for securing investigatorial support for ascertaining genuineness of claims and approaches to identify appropriate strategies for expeditious disposals in RCT.

### **Session-1**

#### **Scope of Session:**

- ✓ **Jurisdictional Charter of Railway Claims Tribunal**
- ✓ **Statutory Interpretation of Key Concepts**
- ✓ **Discussion on Leading Judgments of Hon'ble Supreme Court on Claims**
- ✓ **'Strict Liability' v. 'Liability Contingent on Malfeasance or Negligence'**

*Speakers: Justice K. Kannan & Justice Anjana Prakash.*

*Chair: Justice Kurian Joseph*

The first session emphasized upon the fact, that in a tribunal approaches and procedural *modus* are different as in the civil courts. Till 1989 all claims against the railways (be it for damages towards personal injury, death or loss of goods) had to be taken before a civil court. In civil courts things are supposed to be done in a certain prescribed and established procedures. There is a predetermined and predictable manner of approaching a case. Therefore, there is certainty about how things are to be done. On the other hand tribunal adopts simpler procedure. Tribunals are expected to attempt or endeavor to

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evolve things within a larger framework of rules of natural justice. The fundamental laws of natural justice ensures opportunity to a person to engage and to give his viewpoint which forms the essence of a tribunal. Tribunal decides essentially after adequately hearing a person. It was also stressed that “claims” can be or should be made by the passengers, railway staff or any other person who has the reason to use the railway premises. Discussing about untoward incidents it was suggested that if a railway facility is not properly supervised and if there is a death due to untoward incident, then railway administration has to take the responsibility to ascertain justice. Various challenges and issues faced by the RCTs were discussed. It was emphasized that, there is a serious mismatch between the decisions arrived at by the RCTs and the various High Courts – incidental to the fact that around 90% of the RCT decisions are being reversed on appeal by the respective High Courts. It appeared that there are fundamental misunderstandings of interpretation of the law prevalent on the part of the members of RCTs. It was underscored further that several cases take up 7 to 8 years to be disposed of – mainly because of limitless adjournments and poor access to evidence which is polar opposite to the very objectives and concept of establishing specialized tribunal system. The maximum compensation that can be awarded for a victim, in case of death is 4 lakhs which was thought to be grossly inadequate.

The session also discussed interpretation of key statutory concepts under the Railways Act, 1989 (hereinafter the Act) *vis-à-vis* the principle of strict liability. It was stressed that Section 124A is a radical departure from majority principles of tort law which are based only on proof of negligence. The Act is a welfare legislation. Therefore, it was considered necessary to think about the issue from the perspective of passenger. The afore mentioned principles, must be kept in mind when interpreting the provisions of the Act. Negligence of the victim is nowhere in the consideration of Section 124A of the Act, 1989. On the other hand while discussing about the evolution of the principle of strict liability, it was endorsed in the discourse referring to the common law practices evolved by the English Courts, if a person undertook a hazardous activity, and if that activity causes any loss or injury, the person was called upon to compensate for that injury. Whereas, in the United States, there has been a movement from a fault liability standard to a no-fault liability standard. It was further underscored, that in railway claim cases, the situational reality needs to be considered for the simple reason that an aggrieved passenger is not expected to be travelling with a camera or a recorder to capture evidences presuming an accident or an untoward accident.

It was expressed boldly that the problem of procuring and producing evidence is an insurmountable one in India. The most important consideration for a judge while hearing a case is a) the genuineness of the person seeking the claim, and b) genuineness of the claim(s) made. The critical aspect is that, in most cases, a person who stands casually at the door of a railway coach, or who tries to board a slow-moving train does not have the intention to kill or seriously injure himself. At best, he can be reasonably expected to know that there is a possibility of his falling, which may result in injuries or death. But, he certainly, does not have the intention to kill himself. Further, it was observed that even in a criminally negligent act on the part of the victim, the railways generally cannot escape liability.

In the course of discussion it was suggested that the *rationale* (legislative intent) behind the statute is moving away from negligence based principles to strict no fault liability principles, which needs to be kept in mind while interpreting the provisions. The *proviso* should receive a very narrow and restricted meaning, relevant only to the object with which it has been enacted and attached. It was stressed that the acceleration of disposal of claims be a priority for RCT as an aspect of national importance.

## Session-2

### Scope of Session:

- ✓ **Components of Decision Making (viz. Fair Hearing; Reasoning; Objectivity; Rationality; Critical Analyses etc.**
- ✓ **Bench Etiquette**
- ✓ **Handling difference of opinion in the Bench**
- ✓ **Survival of cause for compensation for personal injuries, after death of injured, especially when the death was not resultant to injury**

*Speakers: Justice K. Kannan & Justice Anjana Prakash.*

*Chair: Justice Kurian Joseph*

Session two was primarily dedicated to “Components of Decision Making (viz. Fair Hearing; Reasoning; Objectivity; Rationality; Critical Analyses etc.” Moreover, subject matters such as “Bench Etiquette” and “Handling difference of opinion in the Bench” were also discussed at length. A few intriguing questions which were posed and discussed include ‘if there be a situation wherein, there is no pleading made by the victim, but evidences showcase the suffering e.g. a mass stampede; under such a situation can compensation be given?’ There seemed to be a clear divide between the positions taken by the “member technical” and the “member judicial”. Wherein the former worried more about the misuse and abuse under the RCT Act regarding compensation, the later focused more on the liberal approach that needs to be adopted while interpreting the welfare legislation. How to deliver a sufficiently reasoned judgment was discussed. It was asserted that, the proper way to deliver a judgment is to first come to a reasoned conclusion and then consult or research for supporting precedents rather than doing it the other way round. It was explained that a reasoned decision is one in which the reason leads to the conclusion. Objectivity was explained as the ability which insulates from influences which affect a decision making. It was narrated that a judge must consider all the possible alternatives and then apply or choose the best suited one applying ‘critical analysis’ to ensure justice. The difference between ‘self inflicted’ and ‘self invited’ injury was debated. In case of having two conflicting views, it was suggested to consider the view which favours the victim. It was also clarified that difference in opinion in a bench can only be in interpretation of law and not while appreciation of facts.

## Session(s)-3, 6 & 7

### Scope of Session(s):

- ✓ **Presentations by the RCTs**

*Panel: Justice K. Kannan & Justice Anjana Prakash.*

Session three, six and seven were dedicated for presentations made by the various State RCTs. The session in essence was a reporting through presentation wherein, the local and the national performances, issues, and best practices were shared and discussed. Suggestions to specific inquiries were provided. Case studies were presented. These sessions provided the judicial and the technical members of the RCTs to not only discuss the progress in their respective jurisdictions, but participate in contributory problem solving by seeking and sharing peer to peer help; thereby motivating to improve the overall RCT performance at the national level.

## Session-4

### Scope of Session:

- ✓ **How to identify operative *Ratio* of a Precedent**

*Speakers: Prof. V.K. Dixit*

*Chair: Justice Kurian Joseph*

Session four was on the theme “How to identify operative *ratio* of a precedent?” It was deliberated that the ‘doctrine of precedents’, which is coherent is to be understood in the light of the fact that what it proposes has survived the test of time and has become socially acceptable. The strict construct of the doctrine of precedent, which has evolved over centuries has its roots in ecclesiastical law. It was clarified as to “what is binding in a case? What constitutes a precedent?” It was explained that it is the principle upon which a particular case had been decided, and is binding and not the case itself. It was also explored that a judgement consists of three basic aspects- findings on material facts – direct or inferential, statement as to principles of laws applicable to legal issues disclosed by the facts and conclusion and judgement based on the combined effect of the above two. It was also proposed that no judge should ever consciously harm or hurt anyone in the exercise of his/her duties. The elaborate process of reasoning would subsume all prejudices the judge may have.

Moreover, in an attempt to emanate a homogeneous approach to passing of orders and disposal of cases with respect to RCT, discussions on a couple of High Court judgements which attempted to lay down a uniform procedure for awarding compensation and settlement of claims were held. It was suggested that while dealing in RCT claims the members should be liberal in general while interpreting the provisions of the Act. It was emphasized that for the dispensation of justice both the litigants must be equally placed.

## Session-5

### Scope of Session:

- ✓ **Appropriate strategies for expeditious disposal in RCT**
- ✓ **Shift towards non-litigative approach & settlement under superintendence of RCT**  
-Need for attitudinal change
- ✓ **Lok Adalat**
- ✓ **Meaning and Scope of Enquiry as distinguished to Trial**

*Speakers: Dr. Arun Mohan*

*Chair: Justice Anjana Prakash*

Session five dealt with appropriate strategies for expeditious disposal at RCTs. It was suggested during the discourse that, a shift towards non-litigative approaches & settlement under superintendence of RCT may be aggressively considered as a tool to deliver expeditious justice. Such an approach, might prove to be more acceptable owing to its participative nature. The meaning and scope of ‘Enquiry’ as distinguished to ‘Trial’ was discussed. It was suggested that the Railways may like to consider ‘annuity certificate schemes’ for award of compensation process. The same might reduce the mammoth amount doled out by the railways towards fake claims. Yet another suggestion made was that the detailed guidelines and Forms under the RCT Act must be prepared and printed in vernacular languages. Moreover, the Form II under the RCT Act may be amended to include mandatory fields such as mobile number; Adhar number etc. These will prove helpful to weed out false claims. It will facilitate GPS location(s) of the victim, identification of genuine victims (filtering out touts and repeat false claimants

etc.). The Form II must contain a) a pointwise detailed guidance note, and b) check list for documentation to be attached with the claim.

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