

# **NATIONAL JUDICIAL ACADEMY**



## **Programme Report**

### **WORKSHOP FOR MEMBERS OF RAILWAY CLAIMS TRIBUNAL**

**10<sup>th</sup> – 11<sup>th</sup> September, 2016**

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## **INTRODUCTION**

The National Judicial Academy organized a two-day workshop for the Members of the Railway Claims Tribunal on 10<sup>th</sup> and 11<sup>th</sup> September, 2016. The main objectives of the workshop were:

- To discuss the jurisdictional charter of the Railway Claims Tribunal
- To deliberate upon the distinction between strict liability and liability contingent on negligence in a statutory context
- To initiate discussions on the components of the judicial decision making process among participants
- To debate and discuss the methodologies for securing police support for ascertaining genuineness of claims
- To identify appropriate strategies for disposal of claims in Railway Claims Tribunal
- To debate and discuss the interpretation of key statutory concepts under the Railways Act, 1989
- To deliberate upon the significance of Precedent
- To discuss on the need for attitudinal change that is required to make a shift towards non-litigative approach and settlement under the Railway Claims Tribunal
- To discuss the practical issues and challenges faced by the participants during the course of their duties as members of Railway Claims Tribunal

The workshop 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 Railway Claims Tribunal.

**DAY 1: 10<sup>th</sup> September, 2016**

**Session 1: Jurisdictional Charter of Railway Claims Tribunal and Overview of Railway Accidents in India**

(10:00 AM – 11:00 AM)

**Speakers:** Hon'ble Justice J. R. Midha, Hon'ble Justice K. Kannan

Justice G. Raghuram, Director, National Judicial Academy commenced the session with a warm welcome of the resource persons and the participants. Thereafter, he shared the ideas that have brought in the establishment of Judicial Education Institutions in India and how vital the work of National Judicial Academy is, for the purposes of disseminating judicial education. This was followed by a self-introduction by all the participants. The participants were Judicial and Technical members of the Railway Claims Tribunal.

Justice K. Kannan made his opening remarks. He introduced the Railways Act, 1989 (hereinafter referred to as 'the Act') and talked at length about the contours of its jurisdictional charter. He said that the main idea behind the Act was quick and expeditious disposal of cases. He went on to mention some statistics about railway accidents in India and lamented the delay in disposal of claims relating to railway accidents. He pointed out that the number of deaths caused by railway accidents is vastly fewer than that caused by road accidents. Yet, the problem of compensation for the victims of railway accidents is largely an unsolved one. He said that Maharashtra ranks no. 1 in terms of number of deaths caused by railway accidents in India.

The speaker outlined the serious challenges and issues facing the Railway Claims Tribunal:

- There is a serious mismatch between the Railways Claims Tribunals and the various High Courts – very much indicated by the fact that around 90% of the RCT decisions were being reversed on appeal by the respective High Courts.
- This suggests a very fundamental misunderstanding of the law and its interpretation on the part of the members of Railway Claims Tribunal.
- The ground reality is shocking. Several cases take up 7 to 8 years to be disposed of – mainly because of limitless adjournments and poor access to evidence.
- Grossly inadequate maximum compensation that can be awarded for a victim, in case of death – 4 lakhs. Delhi High Court recommended to the central govt. to increase the maximum compensation to 8 lakhs.

Justice K. Kannan asked the audience to see that the gravity of and the grief caused by death remains the same – whether that death be caused by a rail accident, road accident or a maritime one. He pointed out that insurance companies, in the case of death by road accident readily offer compensation of 10 lakhs, whereas in the case of a death caused by railway accident – the maximum compensation is hardly justifiable. The value of a life ought to be more than 4 lakhs.

The second speaker Justice J.R. Midha continued. He said that the problem of road accidents and claims arising out of them has largely been solved by now, although, not perfectly. The Railway claims challenge is what needs the serious attention of the judicial system.

The speaker, then, went on to share his experience as a judge at the Delhi High Court. When he first became a judge, he said, he had studied how other parts of the world tackled this problem of accidents, claims and compensation. In that regard, he narrated an anecdote of one of his acquaintances being compensated \$5000 in 5 to 6 hours after the latter had met with a road accident in Canada. He suggested India take inspiration from that system and fast-track the process of disposal of claims in India. In a normal case, the speaker said, the compensation is determined keeping in mind the various factors such as, the age of the victim, the number of family members of the victim.

Justice J.R. Midha mentioned the powers of a judge under Section 165 of the Indian Evidence Act, 1872 and urged the participants to make use of this exclusive power to ascertain the validity and genuineness of claims – on the very first day of the trial.

*Section 165 of the Indian Evidence Act, 1872:*

*165. Judge’s power to put questions or order production – The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.*

He particularly stressed the phrase – “ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant”, which gives absolute authority to any judge to examine the witness, litigants and the advocates in any manner. The speaker said that inquiry means the search for truth and the judge should take it upon himself to conduct the inquiry in any manner he deems fit to reach the ultimate goal of truth and justice. He pointed out that, if the judge comes to a conclusion that the claim is a fake one, then, the claimant can be penalized under Section 209 of the Indian Penal Code, 1860. Fake claimants should be deterred at any cost.

*Section 209 of the Indian Penal Code:*

*209. Dishonestly making false claim in Court – Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.*

Justice J.R. Midha asked the participants to share their experience in the cases where they disposed of the claims on the very first day. The response of the participants was largely negative, with a few exceptions.

The speaker likened the claimant to god. He asked the participants to see that the god has come to your court seeking justice (compensation). Would you refuse to grant compensation? On a lighter note, the speaker said that the claims themselves were very simple in nature and that the participants were dealing with the simplest litigation on Earth.

The speaker lamented the fact that access to proof is a matter of great disability in India. He asked the participants to look at the issue from the perspective of the victims – passengers in the railways do not travel with cameras with them all the time, trying to capture pictures and videos of accidents in real time. The doctrine of Res Ipsa Loquitur, which literally means ‘the thing speaks for itself’, is of importance in this context. It could be said that, ‘there is an accident and it speaks for itself’.

Justice J.R. Midha traced the general shift in common law traditions from a negligence standard to a fault liability standard and further down to a no-fault liability standard. He demonstrated this shift with several examples. This, he said, should be kept in mind while deciding cases.

## **Session 2: Strict Liability vs. Liability Contingent on Negligence – Statutory Context and Components of Judicial Decision Making Process**

(11:30 AM – 01:30 PM)

**Speakers:** Mr. R. Venkataramani

The main objectives of this session, as said by Mr. Venkataramani:

- To make the participants think about the law and issues involving railway claims
- To understand the jurisprudence and the legal reasoning behind the law governing railway claims

Mr. Venkataramani made his opening remarks. He said that fundamentally, law is about alleviating human suffering. He further stated that all the elements required for judging are not always available in the right proportion. Therefore, the job of a judge is a difficult one. He traced the evolution of justice delivery systems and linked it to the current-day methods of justice delivery (in railway claims) – Tribunals.

He lamented the fact that at a deeper level, each of us knows that we have a large number of claimants who go away from courts and tribunals without a fair element of justice.

Mr. Venkataramani noted that Sec. 124A is a radical departure from all principles of tort law which are based only on proof of negligence. He traced the evolution of the principle of Strict Liability. He said that English courts began to evolve a rule – if a person undertakes a hazardous activity, implicit in that activity is the principle that if that activity causes any loss or injury, he is called upon to compensate for that injury.

He said that in the United States, there has been a movement from a fault liability standard to a no-fault liability standard. The speaker asked the participants to consider the reality of the situation – the passengers do not travel with CCTVs to capture accidents and untoward incidents. He asked the participants to think

about the issue from the perspective of the passenger. He said that the Act is a welfare legislation. That must be kept in mind when interpreting the provisions of the Act.

The speaker opined that the problem of procuring and producing evidence is an insurmountable one in India. Mr. Venkataramani went on to say that the most important consideration for a judge while hearing the case is the genuineness of the person seeking the claim and that of his claim. The speaker emphasized the point that negligence of the victim is nowhere in the consideration of Section 124A of the Railways Act, 1989. He said that there is no premeditated intent on the part of the passengers when he/she casually walks to the door of a bogie. Pre-meditation is part of Mens Rea in a crime.

The speaker made it clear that Tribunals are not subordinate courts within the meaning of Article 235. They are not subordinate to High Courts in that hierarchical sense. High Courts exercise superintendence powers under Articles 226 and 227. The law of the land is framed by the Supreme Court of India. And, only the pronouncements of the Supreme Court are binding on all the Tribunals in the country.

*Section 124A of the Railways Act, 1989:*

*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 dependent 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 purposes 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.*

### **Session 3: Statutory Interpretation of Key Concepts – Untoward Incident, Self-Inflicted Injury and Criminal Act**

(02.30 PM – 03:30 PM)

**Speakers:** Hon'ble Justice K. Kannan, Mr. R. Venkataramani

Justice K. Kannan commenced the session with an introduction to the key concepts under the Railways Act, 1989. He said that for the purposes of Section 124A of the Railways Act, 1989, the term 'self-inflicted injury' requires a malicious intention on the part of the wrongdoer. The critical aspect is that in most cases, a person who stands casually at the door of a bogie or who tries to board a slow-moving train does not have the intention to kill himself 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, the speaker observed that even in a criminally negligent act on the part of the victim, the railways cannot escape liability.

Mens Rea + Actus Reus = Crime

Self-inflicted Injury = Intent to injure oneself + Knowledge of the injury

Malicious intent is also known as Mens rea or guilty mind. In the past, the Supreme Court used the term 'criminal negligence' in various judgements. Justice K. Kannan made it clear that criminal negligence per se is not an offence. If that criminal negligence causes injury to another, then that becomes an offence. The key point made by the speaker was that – the essential element of malicious intent (to cause injury to oneself) is not present in most claims. Where such an intent is present, the Railways can escape from liability, as it falls under an exception under Section 124A of the Act.

The second speaker, Mr. Venkataramani, made a distinction between the thinking of a lawyer or judge and that of a mathematician. While a mathematician does not know his end in advance (he needs to painstakingly work it out by using constants and variables), that is not the case for a lawyer or a judge. A judge always has his endpoint clearly defined – the rulebook. From this end, he needs to construct his reasoning to meet the ultimate goal of justice.

The speaker observed that the human civilization has moved from a hierarchical society to a society based on equality. Equality today is the sine qua non in any democracy.

The speaker made it clear that in a self-inflicted injury, it is only me and my injury. The railways has nothing to do with it. It is a mere happenstance that the injury occurred when the victim was a passenger in a train. The railways is in no way responsible for the injury that one causes to oneself. The moment anything attributable to the operations of the railway exists, liability of the railways comes in. The speaker made it particularly clear that the individual's rashness or negligence is not an escape route for the railways.

The speaker talked about the rationale (legislative intent) behind the statute moving away from negligence based principles to a strict no fault liability principles. He said that the law really wanted to achieve that welfare end. And that needs to be kept in mind while interpreting the provisions. He said that the proviso should receive a very narrow and restricted meaning relevant to the object with which it was enacted.

In any statutory interpretation, the speaker said, the main task is to understand legislative intent and give effect to it. The law will have to be read in a manner as to advance the so called insolvable contradictions which may arise whenever people want to take undue advantage of the law.

The speaker stressed that the acceleration of disposal of claims be a priority for RCT as the aspect is of national importance. Participants raised many questions and the speaker answered them to their satisfaction.

“The job of the judge is to be blindfolded in favor of the victim” – Mr. Venkataramani.

#### **Session 4: Methodologies for Securing Police Support for Ascertaining Genuineness of Claims and Appropriate Strategies for Expeditious Disposal in RCT**

(03:45 PM – 05:00 PM)

**Speakers:** Hon’ble Justice J.R. Midha

Justice J.R. Midha opened this session with a brief overview of the current methodologies for securing police support in disposal of claims in Railway Claims Tribunal. The police are the first point of contact with the victim – they are holders of the most relevant information. They see the victim and his/her condition first hand. The speaker urged the participants to do their best to extract information from the police to ascertain the genuineness of the claims on the very first day of trial.

The speaker stressed the importance of knowing the truth in a given case. Truth, he said, is legally proven facts. The speaker cited a case in the Delhi High Court, in the judgement of which he laid down an elaborate procedure for expeditious compensation and disposal of cases.

The participants asked many questions relating to the methodologies of investigation, to which the speaker responded.

In a light-hearted way, the speaker suggested that, everyone but the judge knows the truth – both the litigants, the advocates for them, know the truth. The judges should get to know the truth by means of intense questioning of all the parties involved. One way judges can get to the heart of the truth is by cross-examination of all the parties involved. In that regard, Mr. Venkataramani said, “Truth is shaped by the craftsmanship of all the players in the field”.

Justice J.R. Midha likened the truth to god and knowing the truth and deciding on that basis is the ultimate meeting of the goal of justice. He said that only judges have the freedom to invoke their conscience and search for the truth. He said absolute truth is the ultimate god. The speaker said that genuineness of claims should be the most important consideration for the judges.

Justice G. Raghuram said that legislative silence is an invitation to participatory evolution of legislative intent by the other branches of the state. If the legislature is silent on some aspects of the law, the judiciary is obligated to fill the gap by interpreting legislative intent.

## DAY 2: 11<sup>th</sup> September, 2016

### **Session 5: Identifying the Operative Ratio of a Precedent and Shift towards Non-Litigative Approach – Need for Attitudinal Change**

(09:30 AM – 10:30 AM)

**Speakers:** Hon'ble Justice G. Raghuram, Hon'ble Justice K. Kannan

Justice G. Raghuram commenced the session with an introduction to the doctrine of Precedent. He gave a general overview of the doctrine.

He posed a question to the participants – what they understand by the term Precedent. The participants responded well and in good numbers.

Justice G. Raghuram traced the origins of the doctrine to the beginning of life on Earth some 3.8 billion years ago. He said that the doctrine of Precedent works at a very fundamental human level. All of known Evolutionary Biology is constructed from it. Historically, humans have made choices by trial and error. He alluded to the fact that all humans are fundamentally apes and that they do things by mimicking what worked in the past. This anthropological underpinning of the doctrine is what makes it compelling for its application in law.

The doctrine of precedent is coherent because what it proposes has survived the test of time and become socially acceptable. The strict construct of the doctrine of precedent, which has evolved over centuries has its roots in ecclesiastical law.

The speaker made it clear that what is binding in the case of Precedent is the principle upon which a particular case had been decided in the past. It is not the case itself that is binding.

The study of Precedent is essentially the study of jurisprudence or the science of law, which comprises three aspects:

- Legal theory
- Sources of law
- Analysis of legal concepts

The operative ratio is the principle upon which the case has been decided, not the case itself. Stare Decisis means keep to what has been previously decided. The speaker stressed that the distinction between Stare Decisis and Res Judicata is critical. While the ratio in a given case is binding on similar cases in the future, Res Judicata prevents parties to a suit from pursuing the matter decided in the suit again.

Ratio - The only thing in the judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Blind application of principle without regard to facts, is neither advocated nor desirable. The speaker stressed that the choice of identifying the appropriate precedent should be made in a neutral, professional, moral and not in a political way. The speaker asked the participants to exercise judicial discretion in the choice of precedent. He made it clear that judicial discretion is not the discretion of the judge, but that of the law.

The speaker talked about the anatomy of a judgement. He said that every 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
- Conclusion and judgement based on the combined effect of the above two

The speaker went on to talk about the psychology of a judge and observed that no human is infallible and that judges are no exception. He said no judge should ever consciously harm or hurt anyone in the exercise of his/her duties. The elaborate process of reasoning, the speaker said, would subsume all prejudices the judge may have.

The speaker said that often times the Judiciary is the last resort for the people. People come to a court after the other institutions have failed them. If the Judiciary also fails them, the judges would have stricken one more nail in the coffins of democracy.

Many a participant seemed concerned about the vigilance aspect of their duties. Justice G. Raghuram and Justice K. Kannan reassured them that, if the right thing is done in any given case, there need be no fear. Honest officers need not be terrorized by the vigilance department.

Justice K. Kannan observed that the United States is a much more litigant society than India. He gave a couple of anecdotal examples in support of that. Further, he expressed his anguish saying that the US has been able to build its systems, legal or otherwise, in an enviable and effective way. Why and where is that India is failing?

He later observed that in the US, most of the dispute resolution or settlement happens outside the court, unlike in India, where most cases come to court and drag on for years. The speaker lamented the huge pendency of cases and sincerely urged the participants to give their best to solve that most-pressing problem. He talked about exploring alternative methods of dispute resolution such as, Alternative Dispute Resolution (ADR) and Lok Adalats. The speaker observed that disposal of cases in our country means more or less displacement of cases from one court or tribunal to another.

### **Session 6 & Session 7: Issues and Challenges Facing the Railway Claims Tribunal & Discussion among Participants**

**Speakers:** Hon'ble Justice G. Raghuram, Hon'ble Justice K. Kannan

Justice K. Kannan asked the participants to share their experience about the problems they were facing in disposal of cases relating to damages to goods and refund of fares. The participants responded that disposal of the above-said claims was being fast-tracked. Various Lok Adalat-type courts were being held. The speaker made it clear that the attempt with the program was to come up with a homogeneous approach to passing of orders and thus disposal of cases. The speaker cited a few High Court judgements which attempted to lay down a uniform procedure for awarding compensation and settlement of claims.

The participants raised various issues and difficulties they face every day in the dispensation of justice, which were addressed by the speaker. The speaker advised the participants to be liberal in general with adjournments and interpretation of the provisions of the Act.

Justice G. Raghuram observed that independence of the judge is a pre-requisite for the dispensation of justice. The speaker emphasized the need for looking at both the litigants equally for the purposes of dispensation of justice. In that regard, he said, ‘The railways is not a party with a red neon light on its head’. The chairman of the Railway Board and a beggar who was run over by a train are equal for the purposes of justice. The speaker also talked about the need to use power wisely.

The participants raised many questions regarding the practical aspects of the working of the Tribunals at various places in India. A lively discussion of issues and clarifications followed.

In the end, Justice G. Raghuram and Justice K. Kannan thanked the participants for their time and effort in making this conference a success.

The participants, in turn, thanked the Academy and the resource persons for organizing such an educative, informative workshop, the wisdom of which, they could use in their everyday functioning as members of the Railway Claims Tribunal. Some of the members requested that workshops such as this be held more frequently.