

Programme Report

# NATIONAL JUDICIAL ACADEMY



## NATIONAL SEMINAR FOR MEMBERS OF THE RAILWAY CLAIMS TRIBUNAL

**February 16-17, 2019**

At: National Judicial Academy, Bhopal

**Programme Coordinator:**

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## **Objective of the Seminar**

The seminar aimed to overview the charter of RCT within the framework of the enabling legislation; the social welfare scheme under the Railways Act, 1989; review the past performances and to address the institutional bottlenecks affecting the optimum performance of Railway Claims Tribunals. The seminar included discussions on basis of liability as mandated by the legislation, including deliberations on the concepts of Absolute, Strict and Common law liability. The seminar intended to focus on technical areas such as interpretation of key concepts under the statute and components of decision making: best practices such as application of precedent, giving reasoned orders and proactive approach by the members of RCT. The seminar further aimed to bring consonance and balance in functioning of the member judicial and member technical of the tribunal through dialogue among the participants, managing difference of opinions in the bench and improving relation with the bar by adopting best practices. Further, focus was on the uses and impact of information technology and Lok-Adalats within the scheme of the legislation and revise the claims format to reduce errors and maximize the performance of the tribunals. The sessions provided a forum for the members to exchange views, improve knowledge curve and evolve best practices for expeditious adjudication in the RCT.

## **Session 1**

**Theme: Overview of Charter of RCT vis-a-vis Social Welfare Scheme under the Railways Act, 1989**

**Speakers: Justice K Kannan, Justice Valmiki J. Mehta, Mr. MS Ganesh**

**Chair: Justice J.R. Midha**

The speaker highlighted the hierarchy and structure of the railways claims tribunal. The nature of proceeding in the tribunal as different from the civil courts was pointed out. It was suggested that substantial law and procedural law cannot be read in isolation. The concept of distributive justice by John Rawls was discussed with reference to social welfare scheme under the Railways' Act. It was highlighted that there are highest number of cases for accident claims but, there are a large number of fake cases as well. The speakers suggested that unnecessarily delaying the case will lead to delay in the justice. Various

sections of the Evidence law were dealt with, in light of the theme of the session. The session also included discussion on the basis of liability as mandated by legislation: explaining the concepts of absolute, strict and common law liability. The participant members were suggested to start every case for search of truth as the duty of a judge is to find the truth and decide a case

## **Session 2**

### **Theme: Interpretation of the statute: Key Concepts**

- **Untoward Incident (S. 124A) • Self-inflicted injury • Criminal Act • Violent Attack/Stampede Examples**

**Speakers Justice K. Kannan, Justice Valmiki J. Mehta and Mr. MS Ganesh**

**Chair: Justice J.R. Midha**

The session involved deliberations upon the key concepts under the Act such as untoward incident, self-inflicted injury, criminal act and violent attack and stampede. The speaker highlighted that the legislation pertaining to railway claims is a companion legislation which deals with liability as violation of Art. 21 of the constitution occurs, statutory liability is involved. The concept of tortious liability was also discussed. The speaker emphasized on interpretation of Sec. 124 in light with Sec. 123 of the Railway's Act for 'untoward incident'. Further the session involved interpretation of Sect 124A for certain aspects of tortious liability. It was stated that in case of railway accident claim each fact will give a clue whether a person is a bonafide passenger or if it is untoward incident, self-inflicted injury or criminal negligence.

### Session 3

#### **Theme: Components of Decision Making: Best Practices**

- **Examination of Witnesses • Application of Precedent • Reasoned Orders • Pro-active approach for gathering evidence**

**Speakers Justice K Kannan Justice Valmiki J. Mehta and Mr. MS Ganesh**

**Chair: Justice J.R. Midha**

The discussions involved areas pertaining to examination of witness, application of precedent, reasoned orders and pro-active approach of a member for gathering evidence. It was emphasized that RCT is more powerful than a civil court. The ambit of Sec. 47 of the Indian Evidence Act was discussed in detail relating to proving a document for evidence. Various landmark judgements were highlighted for discussion such as *A.A. Haja Muniuddian vs. Indian Railways*, AIR1993SC361; *R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P*, 2003 (8) SCC 752; and *Gulzar Ali and Ors. vs. State of H.P.*, (1998)2SCC192. Speakers deliberated upon what is a judgement and stated that the consumers of a judgement are litigant, lawyer, appellate court and academicians (for precedents). A judgement of railways claims must state the facts such as whether untoward incident, whether bonafide passenger, self-inflicted injury or criminal incident. Further, it must touch upon the relevant part of the deposition or the document and not the whole deposition or entire document. It was pointed that time of recovery of body is very crucial in deciding claims in railways accidents. The judgement must include a decision and a reason to the decision. The session further involved discussion on the technical challenges faced by the member judges of the tribunal.

#### Session 4

**Theme: Duplicate Claims and Role of Registry, Protecting litigants' Interest in Award Amounts through Orders and Execution of Awards.**

**Speakers: Justice K Kannan Justice Valmiki J. Mehta and Mr. MS Ganesh**

**Chair: Justice J.R. Midha**

It was highlighted that the legislation aims to protect the interest of the litigants. The adverse effects caused due to delay in order were highlighted by the speakers. It was pointed that there should not be any upper limit in compensation in certain acts. The difference between Sec. 73 & S.74 of the Contract Act was also discussed. The case of *Padma Sundar Rao vs. State of A.P.* was discussed at length during the course of discussion.

#### Session 5

**Theme: Methodologies for expeditious Adjudication & Use of IT**

**- Online Adjudication • Lok-Adalat & Way forward**

**Speaker: Justice K Kannan**

**Chair: Justice A.K Goel**

The speaker pointed out the prospects of video conferencing, online adjudication and Lok Adalat in the area of railway claim matters for expeditious disposal. It was highlighted that in a hierarchy there are conflicting laws and which one prevails is decided by adjudication. The working and composition of National Green Tribunal was pointed out for comparison and finding the best practices which could be implemented in RCT as well. It was further mentioned that video conferencing technology for hearing matter have been beneficial in various important cases. The participant members also discussed the challenges faced by them in implementing the technology. The case *Union of India (UOI) vs. Rina Devi AIR2018SC2362* was discussed at length.

## Session 6

### **Theme: Managing Differences of Opinions in the Bench, Bench Etiquettes and Improving Relationship with the Bar**

**Speaker: Justice K Kannan**

**Chair: Justice A.K Goel**

It was discussed that there are two aspects 'position' & 'personality', a judge must ignore both to uphold the dignity of the institution. It was stated that there is no scope of individual conflict and only conflict of views/opinions should exist. Further, the speaker highlighted that views should be objective and not subjective to protect the right of the claimant. It was stated that differences are necessary but differences must be reconciled as far as possible. In case of RCT the Member Judicial and Member Technical must try to reconcile their differences in order to protect the rights of claimant. It was further emphasized that as an institutional member one must try to avoid personal look outs and must work for the institution. Institutional traditions must be followed at all times in an institution.

Last session involved presentations by the RCT Members. The members from Ahmedabad, Bhopal, Bhubaneswar, Chandigarh, Delhi, Gorakhpur, Guwahati, Jaipur, Kolkata, Lucknow, Mumbai, Nagpur, Patna and Secunderabad gave presentation highlighting the past performance including the cases instituted, disposed and pending in their respective bench. The members also highlighted the infrastructure and manpower requirements of their respective benches.

In addition to the above discussion and deliberation other areas of discussion were:

- Improvement in the quality of DRM Report. It was suggested that if the concerned officer does not comply with timely submission of the report or the quality is not up to the mark then proper action must be taken against.
- Various districts like Gorakhpur, Lucknow, Guwahati and Mumbai where Lok Adalats is not implemented were suggested to try and implement Lok Adalats in cases pertaining to railways accident claims. The benefits of the LOK Adalats in the related area were also discussed during the sessions.
- It was highlighted that Negligence of Railway is not necessary since it is a welfare legislation which is for the benefit of the people.

- If an accident of Railway has occurred, any passenger who suffered injury is entitled to compensation. The types of accidents considered in railways include collision, fire and derailment.
- It was suggested that railways must start an anti-corruption branch to find out the cartels involved in fake cases.