

Part VI- Claims and Liability of Railways as carriers

1. Consignments booked by rail can sometimes get lost or damaged in transit. In such cases, claims for compensation can be lodged with the Railways. Liability of the Railways as carrier is contained in section 93 to 112 of the Railways Act, 1989. Certain other sections of the Railways Act having a bearing on the subject are Section 64,65,67,69,76,80 & 81. The main sections are explained below-

General responsibility of Railways as carrier of goods

2. General responsibility of Railways as carrier of goods is contained in section 93 of the Railways Act 1989, which is reproduced below :

“93. General responsibility of a railway administration as carrier of goods. – save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction damage or deterioration in transit, or non-delivery of any consignment, arising from any cause except the following namely :-

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) order or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the central Government or a State Government authorized by it in this behalf;
- (f) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee;
- (g) natural deterioration wastage in bulk or weight due to inherent defect, quality or vice of the goods;
- (h) latent defect;
- (i) fire, explosives or any unforeseen risk; Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods”

Responsibility for goods delivered at a siding

3. Section 94 of the Railways Act provides that when consignment is to be delivered at a private siding, the railway Administration shall not be responsible for loss, destruction, etc. after the wagon containing the consignment has been placed at the specified point of inter-changed and the owner of the siding has been informed accordingly. Thus a siding holder has to point out the shortages, if any at the point of interexchange at the time of placement of the wagon and if he fails to do so the Railway do not agree to any further responsibility.

Responsibility for goods carried at owner's risk rate

4. Owner risk rate is lower than the Railway risk rate. Therefore, according to section 97 of the Railways Act. For goods booked at owner's risk rate, Railway do not accept any responsibility for loss etc. except on proof that such loss etc. occurred due to misconduct of Railways. Thus in such cases the burden of proof lies on the claimant.

Delay or retention in transit

5. Section 95 of the Railways Act 1989 gives exemption from responsibility for loss etc. caused by delay or detention in transit, if it could be proved that the delay or detention arose for reasons beyond the control of Railways and no misconduct or negligence on the part of their staff etc. was involved.

Good in defective condition or defectively packed

6. Section 98 of the Railways Act 1989 frees Railways from liability for goods in defective condition or defectively packed until negligence or misconduct on the part of the railway administration or of any of its servants is proved.

Liability after termination of transit

7. Definition of transit as contained in section 2(21) of the Railways act 1989 is reproduced below:-

“section 2(21)-”In transit” in relation to the carriage of goods by railway, means the period between the commencement and the termination of transit of such goods, and unless otherwise previously determined-

- (a) transit commences as soon as the railway receipt is issued or the consignment is loaded, whichever is earlier;
- (b) transit terminates on the expiry of the free time allowed for unloading of consignment from any rolling stock and where such unloading has been completed with such free time, transit terminates on the expiry of free time allowed, for the removal of the goods from the railway premises.”

8. The liability of railway after termination of transit is explained in section 99 of the Railways act 1989. Its main features are that a railway administration shall be responsible as a bailee under Sections 161, 152 and 161 of the Indian Contract Act, 1872(9 of 1872) for the loss,

damage etc. up-to a period of seven days after the termination of transit and that they shall not be responsible in any case for the loss, damage, etc. arising after the expiry of a period of seven days after the termination of transit. In the case of perishable goods, animals, explosives and dangerous goods, no responsibility is taken by the Railway after the termination of transit.

Exoneration from liability in certain cases

9. Specific provisions has been made in Railways act 1989 exonerating the Railways from any indirect or consequential loss or damage or for loss of particular market. Claims are sometimes received alleging delay in transit and asking for compensation on account of consequential loss of market, fall in price etc. such claims are not payable under Section 102(d) of the Railways Act. Section 102 also mentions certain other cases where Railways are exonerated from liability e.g. when consignor mis-declares consignment or commits fraud and so on.

Responsibility for goods carried in open wagon

10. A special provision has been made in section 104 of the Act regarding liability in respect of goods which under ordinary circumstance would be carried in covered wagons and would be liable to be damaged if carried otherwise and which are with the consent of the consignor carried in open wagon. In such cases, the responsibility of the Railways for loss, etc. is only half of the amount of liability in the normal circumstances. Consigners sometimes are obliged to give such consent when covered wagons are not available and the goods have to be dispatched urgently.

Responsibility for luggage

11. Section 100 of the Act provides that until the luggage is booked and a receipt for the same is obtained railways do not accept any responsibility for the loss, damage, etc. occurring to it.

Liability of wrong delivery

12. Section 80 provides that where a railway administration delivers the consignment to the persons who produce the railway receipt, it shall not be responsible for any wrong delivery on the ground that such person is not entitled there to or that endorsement on the railway receipt is forged or otherwise defective.

Extent of monetary liability in respect of any consignment

13. Section 103 of the Railways Act 1989 lays down that until the consignor declares the values of the consignment offered for carriage and pays the prescribed percentage charge on the value of the consignment the monetary liability for the consignment shall not exceed such amount as may be prescribed. The limit of monetary liability and the percentage charge to be paid on value, have been prescribed in the “Railways (extent of monetary liability and prescription of percentage charge) Rules 1990”. According to this, in the case of any consignment (other than animals or luggage), the liability of Railways shall be limited to an amount calculated at Rs. 50/-per kg. unless as the consignor has declared its value and paid percentage charge on excess value of such consignment.

Notice of claim

14. Section 106 of the act provides that a person wanting to prefer claim on the Railway for loss damage etc. must give a notice of the same within a period of 6 months from the date of booking, Thereafter any claim preferred after 6 months can be rejected by the Railways as time barred.

Where to lodge the claim

15. According to section 107 of the act, a claim can be lodged either to the booking railway administration or the destination station Railway or the Railway where loss, damage, etc. occurred. However, according to the procedure in force on the Railways claims are dealt with by the destination station railway and it is advisable therefore for the claimant to send his application for claim to that railway in the interest of speedy settlement.

Liability for Passengers

16. The rules regarding liability of Railways for death and injury to the passengers in accident are contained in chapter XIII of the Railways act, 1989,. According to the rules made under the Act, the maximum amount payable in the event of death is Rs. 4 lakhs. The amount payable for different types of injuries has also been prescribed in the rules and varies from Rs. 32,000 in the case of fracture of a major bone to as much as Rs. 2 lakhs in the case of loss of both hands. Applications for compensation are to be submitted to the Railway claims Tribunal.

Railway claim tribunal

17. In order to reduce delays which used to occur in several civil courts in respect of cases filed therein by the claimants whose claims had been rejected by the Railways, Government of India have set up Special tribunals known as Railway Claims Tribunals where the claimants can lodge their suits. The civil courts, therefore, have ceased to have any jurisdiction after the setting up of the Claims Tribunals in 1989.

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