

(1992) 07 MP CK 0035
In the Madhya Pradesh High Court
Case No : M.F.A. No. 305 of 1992

Raj Kumari and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-07-1992

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 114

Citation : (1993) ACJ 846

Hon'ble Judges : M.V. Tamasker, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : B.N. Pandey, for the Appellant; Sanjay Yadav, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—The only accident on 16.7.1991, were rightly denied question involved in this appeal is whether payment of compensation by the learned the appellants as dependants of the deceased Judge as Ad hoc Claims Commissioner Sheo Ram Singh, who died in a railway under the provisions of Section 82A of the Railways Act, 1890, on the ground that they failed to prove that the deceased was a "bona fide passenger" meaning thereby that he did not hold a valid railway ticket, pass or permission for the journey.

2. Learned counsel appearing for the dependants-appellants herein contends that the claim for compensation could not have been negated by the lower court on the ground mentioned above.

3. Learned counsel appearing for the Railways supports the decision of the Claims Commissioner on the basis of the ruling of Patna High Court reported in Ramchandra Prasad v. Union of India AIR 1939 Patna 316 and Full Bench decision of Allahabad High Court reported in Sundari and Others Vs. Union Of India (UOI) and Another,

4. The aforesaid decisions cited at the Bar (Sic. held that liability of) railway administration u/s 82-A of the Act to pay compensation for death in a railway

accident arises only if the deceased was a bona fide passenger" and not for the death in such accident of any trespasser or ticketless traveller.

5. The main question that arises in this case is on whom the onus of proof lies in such claim cases and whether any presumption under the Evidence Act can be raised. Normally under Sections 101 and 102 of the Evidence Act, the burden to prove such facts, on which the legal right or liability depends, is on such person who asserts existence of these facts. But the question before us is whether the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, can be placed on his dependants. Obviously, such burden of proof is impossible to be discharged by the dependants, who can have no means of knowledge, whether the deceased, before boarding the train, had purchased a valid ticket, pass or permission from the railway authorities. It is likely that such a deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings, if any.

6. The provisions of Sections 66, 68, 113 and 122 of the Act do indicate that the person is deemed to be a "passenger" when he travels either on ticket, pass or with permission of the authorised officer of the Railways. Section 68 contains prohibition against travelling without pass or ticket or permission and provides as under:

68. Prohibition against travelling without pass or ticket.-(1) No person shall, without the permission of a railway servant empowered in this behalf by the railway administration, enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket.

(2) A railway servant granting the permission referred to in Sub-section (1) shall ordinarily grant to the passenger a certificate that the passenger has been permitted to travel in such carriage upon condition that he subsequently pays the fare payable for the distance to be travelled.

7. The provisions of Sections 113 and 122 of the Act make travelling without ticket punishable under certain circumstances and liable for payment of fare and fine. The scheme and the Act seen as a whole makes it evident that the entry into a railway carriage required of a person to obtain a ticket, pass or permission and in absence thereof, his action or omission is punishable with imprisonment or fine, including removal from the carriage. In our opinion, when a person is found dead as a result of accident in a railway carriage, in which he was travelling, a presumption may be drawn u/s 114 of the Evidence Act keeping in view of the prohibition u/s 68 of the Act against boarding a train without ticket that the deceased was a bona fide passenger. Since ticketless travel is an illegal act and exposes such traveller to penal action, the presumption is of innocence in favour of such one of the travellers or passengers in a train. It is for the railway administration to prove contrary and the burden in such circumstances that the

deceased was a ticketless traveller or was not a bona fide passenger, should be on the railway administration which has special means of knowledge as to whether any ticket was issued to that deceased or whether at any point, before or at the end of journey, he was checked and detected by staff of the railway as an unauthorised person without ticket, pass or permission. We have to keep in mind that the provision contained in Section 82-A of the Act is a beneficial piece of legislation to compensate monetarily at a fixed sum each victim involved in railway accident. The argument of the learned counsel for the Railways cannot be accepted that the burden is on the dependants of the deceased passenger to prove that the deceased, who died in railway accident, possessed a valid ticket or pass. To place such onus of proof on the dependants would amount to denial of the benefit of such legislation to them for reasons beyond their control because such onus is impossible to be discharged.

8. We fully agree with the views of the Patna and Allahabad High Courts that compensation u/s 82-C is payable only to the dependants of bona fide passenger who died in an accident and not to every traveller of the ill-fated train. The aforesaid views of Patna and Allahabad High Courts are, however, distinguishable on facts because there existed evidence on record in these cases to show that the deceased passenger possessed no valid permission, pass or ticket. Such is not the case before us. The decisions, however, do not discuss or decide the question of any presumption and of onus of proof under the Evidence Act in such cases.

9. In the case before us, the presumption has to be drawn that the deceased was a bona fide passenger who lost his life in the railway accident. The contention of the learned counsel for the Railways is too hyper-technical that no specific plea in that behalf was raised in the claim petition. We find that the parties were fully alive to the issue and the evidence was led by them on the question whether the deceased was a bona fide passenger or not.

10. The lower court although rejected the claim on the ground that the deceased was not a bona fide passenger but has assessed the quantum of compensation payable at Rs. 50,000/-, which is the maximum limit of amount of compensation fixed in Section 82-A of the Act, as it stood at the relevant time on the date of accident. In view of our finding that the presumption could be raised in favour of the deceased, being a bona fide passenger, the full amount of compensation of Rs. 50,000/-, as quantified by the lower court, cannot be denied to the dependants.

11. In view of the legal discussion aforesaid, the appeal succeeds and is allowed. The appellants as dependants of the deceased passenger are entitled to a sum of Rs. 50,000/- as compensation and the claim deserves to succeed to that extent. It is directed that the appellants are entitled to be paid a sum of Rs. 50,000/- as compensation for the death of the deceased passenger. The appellants shall also get costs of this appeal. Counsel's fee Rs. 500/-, if certified.