
(1969) 11 MAD CK 0010
In the Madras High Court

Rajammal		APPELLANT
	Vs	
The Union of India (UOI)		RESPONDENT

Date of Decision : 11-11-1969

Acts Referred:

Railways Act, 1890 — Section 66, 82A

Citation : (1970) ACJ 430 : (1970) 83 LW 734 : (1970) 2 MLJ 497

Hon'ble Judges : S. Maharajan, J

Bench : Single Bench

Judgement

S. Maharajan, J.—This is an appeal against the order of the Claims Commissioner, Southern Railway, Madurai, dismissing the application of

the appellant for compensation for the death of her husband u/s 82-A of the Indian Railways Act. Periyasamy, the deceased, was earning his living

as a porter at Danushkodi. He went to Ramashwaram Road to purchase provisions and firewood, and with a view to return to Danushkodi, he

boarded the train No. 653 Pamban-Danushkodi Passenger--in the night of 22/23rd December, 1964 and was washed away along with the train

by tidal waves near Danushkodi. Rajammal, the appellant, who is the widow of Periyaswamy, filed an application claiming compensation on the

basis that her husband was earning Rs. 5 or 6 per day as a porter. But the Claims Commissioner dismissed the petition on the ground that

Periyaswamy was not travelling in the ill-fated train as a bona fide passenger.

2. The word "passenger" has not been defined in the Act. According to the Oxford Dictionary, a passenger is a traveller in a public conveyance by

land or water. Section 66 of the Indian Railways Act prescribes that

every person desirous of travelling on a railway shall, upon payment of his fare,

be supplied with a ticket, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare.

Section 68 of the same Act prohibits any person from entering or remaining 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. It is fair to infer from these provisions, that a traveller, who has neither bought a ticket,

nor obtained a pass or permission of the railway administration, cannot be regarded as a passenger within the meaning of Section 82-A of the Act,

such as to render the railway administration liable to pay compensation for his death resulting from an accident to the train, regardless of the fact

whether the accident has been due to any wrongful act, neglect or default on the part of the railway administration. The Claims Commissioner has

relied upon the ruling in Ramachandra Prasad v. Union of India AIR 1959 Pat. 316, for the position that the railway administration would not be

liable for any compensation for the death of persons who were in the train, not as passengers, but as trespassers. I agree that this is the true legal

position. But, in the application of this principle to the facts of the case, the Claims Commissioner has clearly erred.

3. The evidence on record shows that Periyasamy and P.W. 2 Vellayyan Sammatti came together to the railway station at 9 p.m. and on being told

by the Station-master that he did not know when the train would arrive, both of them went to the house of P.W. 2, which is about 25 yards away

from the railway station, and slept away. The train came 21/2 hours later, at about midnight. As soon as they heard the noise of the train steaming

in, the deceased woke up P.W. 2, and both of them rushed straight to the railway station and without caring to buy tickets at the counter, entered

one of the carriages in the train and took their seats. It is also the evidence of P.Ws. 2, 3 and 4 that, after the deceased got into the train, the Ticket

Examiner came to him and asked him to display his ticket, whereupon P.W. 2 paid Re. 1 to the deceased and the deceased paid that amount to

the Ticket Examiner. That the Ticket Examiner has the power to receive the railway fare on behalf of the railway administration and issue a receipt

therefore cannot be questioned. If the deceased had really paid the fare into the hands of the Ticket Examiner, it would be wrong to regard the

deceased as a trespasser. He would clearly be a bona fide passenger at the relevant time. P.W. 3 Thangiah is the President of the Panchayat

Board of Velanthuravai. He says that he saw P.W. 2 giving Re. 1 to the Ticket-Examiner. P.W. 2 Vellayan Sammatti says that when Periyasamy

got into the train, the Ticket Examiner asked him for the ticket, whereupon he gave Re. 1 to the Ticket-Examiner evidently towards fare payable

by himself and Periyaswamy. It is admitted at the Bar by the learned Counsel for the Railway administration that the railway fare for the travel from

Rameshwaram Road to Danushkodi for two persons is less than Re. 1. Admittedly the Ticket-Examiner died along with Periyasamy, in this

accident. The records in the hands of the Ticket-Examiner, had they not been lost, would corroborate the evidence of P.Ws. 2 and 3. But the

mere circumstance that the Ticket Examiner is dead and his records have been washed away does not justify the rejection by the Claims

Commissioner of the claimant's version that her husband performed the journey after the payment of the railway fare. The criticism of the Claims

Commissioner is that Periyaswamy ought to have purchased the ticket at the railway station before getting into the train. But this criticism overlooks

the peculiar circumstances, that prevailed in the night of 22nd December, 1964. There was a cyclone and a heavy downpour of rain. The train that

was expected to arrive at 9-30 p.m. arrived 21/2 hours later. The evidence shows that the Station Master himself was unable to tell the deceased

or P.W. 2, when the train would arrive. In these circumstances, both of them, instead of waiting at the railway station, went to the house of P.W. 2,

and slept away. The moment they heard the whistling of the train, they woke up helter-skelter and in their anxiety to catch the train, they did not

take the precaution of buying a ticket. They might have thought that instead of wasting time at the counter buying the tickets, they could pay the

fare to the Ticket-Examiner himself. The evidence of the Station Master that he did not sell any ticket at all that night does not militate against the

version put forward by P.Ws. 2 and 3. In these circumstances, I disagree with the Claims Commissioner and hold that the deceased Periyasamy

was not a trespasser, but a bona fide passenger, when he met with his death in the train accident.

4. The next question that arises for consideration is what is the quantum of compensation payable to the appellant. The uncontradicted testimony of

P.W. 1 is that her husband used to earn Rs. 5 to Rs. 6 per day as a porter. His monthly income has therefore, to be fixed at between Rs. 150 and

Rs. 180. As per Part I of the Schedule to the Railway Accidents (Compensation) Rules, where the monthly salary, or in the absence of a monthly

salary, the average monthly income at the time of the accident of the person killed or injured was in excess of Rs. 100, but not in excess of Rs.

300, the amount of compensation should be fixed at Rs. 8,000. I, therefore, fix the compensation payable to the appellant at Rs. 8,000.

5. In the result, the order of the Claims Commissioner is reversed and the respondent is directed to pay the appellant a compensation of Rs. 8,000

with costs throughout.