
(1959) 01 PAT CK 0001

In the Patna High Court

Case No : A.F.O.O. No's. 319 and 320 of 1955

Ramchandra Prasad Sinha

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-01-1959

Acts Referred:

Railways Act, 1890 — Section 66, 68, 82A

Citation : AIR 1959 Patna 316

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : A.C. Roy and Sidheshwar Pd. Singh, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Choudhary, J.—These two appeals arise out of two miscellaneous cases which were heard together and were disposed of by one judgment. The point involved in both the cases is the same. They have, therefore, been heard together with the consent of the parties, and this judgment will govern them both.

2. The short facts are these: One Sudhangshu Sekhar Prasad Sinha, a Sub-Inspector of excise posted at Raxaul and employed in the service of the State of Bihar, and his wife Urmila Devi started by the afternoon steamer from Mahendru Ghat on 1-1-1954, at about 2.30 p.m. When the train in which they were travelling was approaching Raxaul railway station there was a head-on collision between that train and a goods train at 5.30 a. m. on 2-1-1954, near the outer signal of Raxaul station. As a result of that accident, these two persons died and they were found lying dead in the railway compartment they left behind six minor children. Ramchandra Prasad Sinha, their grand-father, therefore, filed two claim petitions on their behalf u/s 82-A of the Indian Railways Act, hereinafter to be referred to as the Act, in respect of the death of their parent.

The claim petition in respect of the death of Urmila Devi was numbered as miscellaneous case No. 16 of 1954 and that in respect of her husband was numbered as miscellaneous case No. 23 of 1954. It was found by the Claims Commissioner that the above two persons were travelling without tickets. He therefore, held they were trespassers and not passengers travelling in the train, and, as such, the appellant was not entitled to any claim under the above section of the Act. Both the claim petitions were, therefore, dismissed. Hence these two appeals have been filed by the claimant in this Court. Miscellaneous Appeal 319 of 1955 arises out of Miscellaneous Case 23 of 1954 and Miscellaneous Appeal 320 of 1955 arises out of Miscellaneous Case 16 of 1954.

3. The finding of the learned Claims Commissioner that Sudhangshu Sekhar Prasad Sinha and his wife were travelling in the train without having any ticket, has not been challenged by the Counsel for the appellant. His contention, however, is that even if they had not purchased any ticket the appellant was entitled to the claims made by him because of the death of the two persons as a result of the accident. The argument put forward is that for the purpose of claiming compensation u/s 82-A of the Act it is not necessary that the deceased must have had proper authority for travelling on the train.

Sub-section (1) of Section 82-A of the Act provides that when in the course of working a railway an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in Sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompanying the passenger in his compartment or on the train, sustained as a result of such accident.

In the present case the train by which these two persons were travelling was admittedly a train carrying passengers. The appellant, therefore, could be entitled to the compensation on account of the death of these two persons if they were passengers within the meaning of that section. The submission made by the learned Counsel for the appellant is that even though these two persons had not obtained tickets for travelling by that train, they were passengers within the meaning of the above section and the claims made by the appellant should have been allowed. On behalf of the respondents, however, it has been contended that the above two persons having no authority to travel by the train in question were merely trespassers and could not be called passengers within the meaning of that section so as to entitle the appellant to claim any compensation. It has,

therefore, to be seen whether these two persons were passengers or not.

4. The term "passenger" has not been defined in the Act, its meaning therefore, has to be found out on interpretation of the various sections of the Act dealing with the question of travelling by a passenger. Section 66(1) lays down 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. Sub-section (1) of Section 68 states that no person shall, without the permission of a railway servant, 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. Sub-section (2) of that section lays down that a railway servant when granting the permission referred to in Sub-section (1) shall ordinarily, if empowered in this behalf by the railway administration, 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.

Thus reading the two sections together it appears to me that a person desirous of travelling on a railway has to obtain a ticket u/s 66 of the Act or can travel if he has with him no proper pass or tickets, with the permission of the railway servant u/s 68 of the Act. So long as he has not been supplied with a ticket under the previous section or given permission under the latter section, he is not a passenger. These sections, in my opinion, deal with the preliminary requisite for a person being a passenger by obtaining a ticket, pass or permission for travelling on a railway.

This is made manifest by Section 68 which prohibits a person to travel as a passenger without obtaining a proper pass, ticket Or permission of a railway servant. In other words, the above two sections read together indicate that a person cannot be a passenger so as to travel on a railway unless he has obtained a proper pass, ticket or permission of a railway servant.

5. The above view gains support from certain other sections of the Act which deal with the consequences of travelling in unauthorised manner. Section 112 provides that if a person, with intent to defraud a railway administration, enters or remains in any carriage on a railway in contravention of Section 68, he is liable to certain punishment. Section 113-A provides for the removal from the carriage by any railway servant authorised by the railway administration in this behalf of the person who, without having obtained the permission of a railway servant, travels or attempts to travel in a carriage without having a proper pass or ticket with him. Section 122 provides for the punishment of a person unlawfully entering upon a railway.

Thus it is clear that a person who enters upon a railway carriage without a proper pass, ticket or permission. is liable to be removed or to be punished, the reason in my opinion, being that he is a trespasser and not a passenger. The term

"passenger" dying as a result of an accident within the meaning of Section 82-A of the Act must, therefore, relate to a person who had been travelling in that train by obtaining a proper pass ticket or permission and not as a trespasser.

6. The view that I have taken gains full support from a Bench decision of the Punjab High Court in *Union of India v. Sardarni Harbans Kaur* AIR 1957 PNH 164. In that case the deceased travelled by a goods train without a ticket and died as a result of a collision. There was neither explicit or implicit consent of the railway in regard to his travelling by that train. In a suit for damages for accident due to negligence of the railway servants, it was held that generally speaking a passenger is one who travels in a public conveyance by virtue of a contract with the carrier, express or implied, and that a person who travels contrary to a bye-law and against the wishes of a railway servant is a trespasser and he cannot recover if as a result of negligence of the carrier he suffers injury.

In coming to the above decision Kapur, J. (as he then was) who gave the judgment of the court relied on various decisions but reference may be made to only one of them, namely, to the case of *Grand Trunk Rly. Co. of Canada v. Walter C. Barnett* ILR 1911 AC 361 the facts of which are to some extent similar to those of the present case. The plaintiff in that case came into the Grand Trunk Station and got into a train which reversing and going to the Pere Marquette yard. He jump-ed on to the platform at the rear end of a car and stood with one foot on the platform and the other on the step.

He was aware that the train was not in use of a passenger train and he had no ticket and had received no invitation to travel by train. He was also disobeying a by-law of the railway in standing on the platform of the car. The Privy Council held that the plaintiff in those circumstances was a trespasser both on the premises of the Grand Trunk Railway Company as well as on the train. With respect to the claim for damages Lord Robson said:

"....to say that they were liable to a trespasser for the negligence of their servants is to place them under a duty to him of the same character as that which they undertake to those whom they carry for reward. The authorities do not justify the imposition of any such obligation in such circumstances. A carrier cannot protect himself against the consequences which may follow on the breach of such an obligation (as, for instance, by a charge to cover insurance against the risk), for there can be no contracts with trespassers: nor can he prevent the supposed obligation from arising by keeping the trespasser off his premises for a trespasser seeks no leave and gives no notice. The general rule, therefore, is that a man trespasses at his Own risk."

In *Pratab Daji v. Bombay, Baroda, and Central India Railway Co.* ILR 1 Bom 52 the plaintiff entered a carriage on the defendants' railway at Surat with the purpose of proceeding to Bombay. By an oversight, and without any fraudulent intent he omitted to procure a ticket at Surat. On arriving at Nowsari. he applied to the station master for a ticket to Bombay, but was refused; he was, however,

allowed by the defendants" servants to proceed in the same train to Balsar, where he again applied for a ticket and was again refused, but was directed by the defendants" servants to get into the train and not leave it again,

At Dhandhu he again got out and applied for a ticket to the station master. During a discussion between the plaintiff's master and the station master, the plaintiff, at the direction of his master, re-entered the train. Ultimately the station master refused to give the plaintiff a ticket, and ordered him to get out of the train; and on his not complying with the order sent a sepoy, who forcibly removed the plaintiff from the carriage. The plaintiff brought an action to recover damages for his forcible and illegal removal from the carriage and for his illegal detention at the station at Dhandu. It was held that though there may not have been fraudulent intention in the plaintiff in not procuring a ticket at Surat, his entry, in the carriage was still unlawful and he started from Surat as a trespasser.

In this connection reference may be made to an observation made by a single Judge of this Court in the case of Mewa Lal Jha Vs. Emperor, in which the question under consideration was as to unlawful entry u/s 122 of the Act, His Lordship observed that there is one form of unlawful entry for which a special punishment is provided in Section 112 read with Section 68 of the Act, namely entry upon a railway carriage without the permission of a railway servant and without a proper pass or ticket for the purpose of travelling thereon as a passenger. This also indicates that in order to travel as a passenger, he must have a proper pass, ticket or permission from a railway servant.

7. Counsel for the appellant has, however, placed reliance on *Austin v. Great Western Ry. Co.* (1867) 2 QB 442 and *Mahammad Hosein v. A. W. Farby* 25 C LJ 610: AIR 1917 Cal 105. In the first case the plaintiff's mother, carrying in her arms the plaintiff, a child of three years and two months old, took a ticket for herself by one of the trains of the defendants" railway, but did not take a ticket for the plaintiff. In the course of the journey an accident occurred through the negligence of the defendants, and the plaintiff was injured. By 7 and 8 vict. C 85, Section 6 railway companies were bound to carry, by certain trains, children under three years of age without charge, and were entitled to half the fare charged for an adult in respect of all children between three and twelve years of age.

At the time the plaintiffs mother took her ticket no question was asked by the defendants" servants as to the age of the child and there was no intention on the part of the mother to defraud the company. It was held that the plaintiff was entitled to recover against the defendants for the injury he had received. The facts of the case were materially different from those of the present case and the decision in that case, therefore, can have no application to the present case.

In the second case the question involved was whether travelling in a railway carriage without a pass or ticket, but without intent to defraud, is a criminal offence or not within the meaning of the Act. The question whether a person so

travelling is a passenger or not was not under consideration in that case.

8. On consideration of the provisions of the Railways Act as well as the authorities discussed above, my oncluded opinion is that a person who is travelling on a train without a proper pass, ticket or permission as required by Ss. 66 and 68 of the Act is A trespasser and cannot be called a passenger within the meaning of Section 82-A of the Act.

9. It was then contended by Counsel for the appellant that the liability of the defendants was also in tort and the claim should have been allowed by damages for tort. No suit, however, has been brought for realisation of any damage for tort. The present appeals arise out of proceedings u/s 82-A of the Act, the liability to pay compensation under which, as has been held by a Bench of this Court in Shreenath Singh and Another Vs. The East Indian Rly. Administration, has no necessary relation to the liability to pay damages in an action in tort. It has been held in that case that there are no reasons why the principles relating to damages in an action in tort should be imported into Section 82-A of the Act.

10. Both the contentions raised on behalf of the appellant, therefore, fail. There is thus no merit in the appeals which are accordingly dismissed, but, in the circumstances, there will be no order as to cost in this Court.

V. Ramaswami, C.J.

11. I agree.