
(1971) 02 MAD CK 0019
In the Madras High Court
Case No : A.A.O. No. 311 of 1966

S. Mariayayi

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 03-02-1971

Acts Referred:

Railways Act, 1989 — Section 3(15), 68, 82

Citation : (1971) ACJ 360 : AIR 1971 Mad 488 : (1971) 84 LW 461

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Judgement

Ramanujam, J.—The appellant herein is the petitioner in Claim petition No. 50 of 1965 before the Claims Commissioner, Southern Railway

Madurai. The said claim was made by the petitioner as a dependant of one Michael, who lost his life while he was traveling in the ill-fated train

which was washed away between Rameswaram and Dhanushkodi on the night of 22-12-1964. Her claim for compensation of Rs. 8,000 as

arising out of the death of her husband was rejected by the Claims Commissioners on the ground that it has not been established that the deceased

Michael was a bona fide passenger within the meaning of Section 82-A of the Indian Railways Act and as such the petitioner as his dependant was

not entitled to any compensation. The decision of the Claims Commissioner is challenged in this appeal.

2. The petitioner's husband, the deceased Michael, was working as a Greaser in the ship "Irwin" and his work spot was at Mandapam though his

residential quarters were at Dhanuskodi. After his duty was over at 5 p.m. on 22-12-1964 he seems to have taken the duty pass from the Serang

of the ship and left Mandapam railway station at about 6 p.m. by the ill-fated

train to Dhanushkodi. At the time when the train was a proceeding from Rameswaram road to Dhanushkodi the mishap occurred and the train was washed away. The Claims Commissioner found that the petitioner's husband did in fact travel in the ill-fated train and lost his life in the accident. But on the question whether he is a bona fide passenger as contemplated in S. 82-A of the Indian Railways Act, the Claims Commissioner held that though he had travelled in the train with a duty pass, the pass which was used cannot be said to be a proper pass and that, therefore, he should be treated as a persons who traveled without proper authority and therefore a trespasser.

3. Therefore, the only question that has to be considered in this appeal is whether the duty pass used by the deceased while travelling in the ill-fated train was a proper pass as defined in Section 3(15) of the Railways Act. On this aspect of the matter, we have to consider the evidence of P. Ws.

2, 3 and 4 and R. W. 1, P.W. 2 was a fireman in the ship called ""Irwin"" on 22-12-1964 and he speak to the fact that after his duty was over the deceased was waiting for the train at Mandapam station to go to Dhanushkodi and that he was having with him a duty pass. However, he admitted in cross examination that though himself and the deceased were residing in the quarters given to them at Dhanushkodi, no residential card passes were issued to them and that they were usually either travelling with duty pass or by purchasing tickets to go to Dhanushkodi. P.W. 3 is the Serang of the ship and he deposed that he gave the duty pass to the deceased to go to Dhanushkodi after his duty was over at 5 p.m. on 22-12-1964, that he saw the deceased in the station and that he had requisite working under him. He has however admitted in cross-examination that it was not necessary to take the prior permission of the Chief Engineer for giving the duty pass to persons working under him, that all the passes were in his custody and that he was not, however, maintaining any register as to whom the duty pass was given. He also admitted that the duty pass should be used only when the person is on duty but somehow the practice was to give passes to persons to go to their places and that he followed that practice in giving the duty pass to the deceased. He further admits that no residential pass was issued for the use of the workers to go to their quarters. P.W. 4 who was also a Greaser in the ship "Irwin" at Mandapam, has

deposed that the deceased asked the Chief Engineer to grant him leave for Christmas at 4-30 p.m. on 22-12-1964, that the Chief Engineer asked him to enquire from the Chief Engineer of the Ship "Goshan" whether any body in that ship wanted to go on leave and said that he will decide about granting leave afterwards. He also stated that the Chief Engineer directed the deceased to take the pass from Serang and that he took the duty pass accordingly. The Chief Engineer of the ship "Irwin" has been examined as R. W. 1. He specifically denies that the deceased approached him for grant of either permission or leave. He also denied that he permitted the deceased to use the duty pass nor authorised the Serang of the ship for handing over the duty pass to the deceased. He states that there was only one duty pass available in the ship between Mandapam and Dhanushkodi and it is given to the workers when they go on duty that normally the duty pass will be either with him or with his assistant, the second Engineer, that sometimes it might be left with Serang but the Serang was not authorised to issue the pass to any worker without his permission. He specifically stated that the duty pass could not be used by the workers for going to their place of residence and that normally a man going on duty to Dhanushkodii would take the pass and give that pass to the Chief Engineer of the other ship at Dhanushkodi to enable some worker from that ship to go to Mandapam and that the pass could be used by an employee if his duty was over. In the light of the above evidence it has to be considered whether the deceased was an authorised person to travel with the duty pass.

4. Though the deceased is said to be an employee of the Marine department, he has been considered as an employee of the railway as regards the user of the pass by the Claims Commissioner and I find that the parties also proceeded on that basis. Even before me it is not disputed that the deceased is a servant of the railway and that the railway has properly issued a duty pass to the persons employed in the ship "Irwin", "Pass" has been defined in Section 3(15) of the Railway Act to mean an authority given by a railway administration or by any officer appointed by a railway administration in this behalf and authorising the person to who it is given to travel as a passenger on a railway gratuitously. In this case the pass issued by the railway and used by the deceased was a "duty pass". "Duty pass"

is a pass issued by the railway to enable its employees to travel in the train while they are on duty without payment of the usual fare. In this case the evidence of the Chief Engineer, R. W. 1 makes it clear that the duty pass can be used only by the employees of the ship while on duty and not for use while they are not on duty. In this case the duty of the deceased in the ship as Greaser was over at 5 p.m. and after 5 p.m. and when he travelled by the ill-fated train, he could not be said to be on duty.

The evidence of P.W. 3 that it is the practice to allow the workers to use the duty pass to go to their quarters after their duty is over, even if it is true, cannot make the unauthorised user of the duty pass a property use. A duty pass is granted under free pass rules subject to the regulations of the railways. Section 68 of the Railways Act prohibits any person 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 and u/s 69 every passenger by railway shall present his pass or ticket to the railway servant for examination when required. Section 112 makes it an offence punishable with a term of imprisonment or fine, of a person enters or remains in any carriage on a railway in contravention of Section 68 or misuses or attempts to misuse a ticket or pass which has already been used. Section 113 enable the railways to levy an extra charge in addition to the ordinary single fare for the distance travelled if a person fails or refuses to present for examination or to deliver up or requisition his pass or ticket as per Section 69. Section 113-A gives power to the railway to remove a person from a railway carriage if he travels or attempts to travel in a carriage without having a proper pass or ticket with him. The above provisions suggest that to entitle a person to enter into an travel in a train he must have either a proper pass or a ticket issued by the railway. The rules dealing with the issue of passes are contained in the "pass rules and travelling concession" of the Southern Railway. Rule 51 reads thus:

(a) Duty passes may be issued to railway servant when they are required to travel on the business of the railway. Cheque passes may be issued whenever necessary for journey on duty and season passes may be issued to railway servants whose duties demand such frequent travelling that is not possible to issue a cheque pass for each journey. These passes may be issued only over the section of the railway over which the railway

servant has to travel, in connection with his duties and may be used only for journey on duty".

It is clear from the above rule that a duty pass can be used only for journeys on duty and that a railway servant is not entitled to travel with the duty pass while he is not on duty.

5. Rule 83 of the pass rules and travelling concessions relates to the issue of residential card passes. Free residential card passes may be granted to railway servants who are employed in the areas specified in that rule and from this rule, it is clear that, for a journey to a station of residence only a residential pass can be used and not a duty pass. The rule also limits the distance of 15 miles in respect of which a residential pass could be granted. In this case, there is no dispute that the pass has been duly and properly issued by the railway. But the question is whether the pass has been properly used.

6. The learned counsel for the appellant contends that once the court finds that the pass used had been properly issued by the railway, it must be held that the pass used by the deceased is a proper pass, without going into the question whether the pass has been properly used. I am not in a position to agree with the contention of the learned counsel. When the statute requires that a person must possess a proper pass or ticket before he attempts to travel for the purpose of travelling in a railway carriage, it has to be taken that the pass or ticket should be such as to authorise that particular person using it. In this case, though the pass is only validly and properly issued the person who used it is not authorised to use the pass.

The deceased was not on duty and as per the Chief Engineer the duty pass can be used only when the worker is on duty. Hence when the deceased used the duty pass when he was not on duty, it is an improper use of the pass. In my view the words "proper pass" used in Section 68 will also connote the proper use of a pass. Though the pass is one properly issued its use by an unauthorised person for travelling in a railway carriage would amount to the person travelling without a proper pass. I therefore reject the contention of the appellant that by such improper use of the duty pass he might have exposed himself to certain departmental proceedings and that from the mere fact that the duty pass has been improperly used, the deceased cannot be treated as not a bona fide passenger, in

the ill-fated train. I am, therefore in entire agreement with the Claims Commissioner that no residential pass could be issued between Mandapam and Dhanushkodi which is a distance of 32 K. M. and that the use of the duty pass for a journey to residential quarters by the deceased is not authorised and as such, he cannot be treated as a bona fide passenger in the ill-fated train. I have to therefore, uphold the decision of the Claims Tribunal and dismiss the appeal.

7. I am, however, bound to observe that this is a fit case which calls for clemency and sympathetic consideration by the railway. The deceased was admittedly a railway employee and he travelled in the train perhaps with the bona fide impression that he is entitled to use the duty pass for going to Dhanushkodi, in view of the existing practice of the workers using the duty pass for going to their residences. The petitioner is the widow of the deceased and she was being maintained by the deceased during his lifetime. I hope that the railway will take a reasonable and generous view of the matter and see its way to pay some reasonable amount to the petitioner on humanitarian grounds.

8. The civil miscellaneous appeal is dismissed, but there will be no order as to costs.

9. Appeal dismissed.