
(1979) 05 AHC CK 0023
In the Allahabad High Court
Case No : F.A.F.O. No. 307 of 1975

Smt. Yashoda Devi and Others	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 16-05-1979

Acts Referred:

Railways Act, 1890 — Section 82A

Citation : (1980) ACJ 27 : AIR 1979 All 287 : (1979) AWC 568

Hon'ble Judges : N.N. Mithal, J;H.N. Seth, J

Bench : Division Bench

Advocate : J.N. Tewari, for the Appellant; Lalji Sinha, J., for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—This appeal u/s 82-F of the Indian Railways Act by Smt. Yasoda Devi, Suni Kumar and Oudesh Kumar is directed against an order dated 15-3-75, passed by Claims Commissioner, Moradabad dismissing their claim for compensation.

2. The claimants Smt. Yashoda Devi, Sunil Kumar and Oudesh Kumar are the widow and minor sons of late Sri Ram, Boiler Loco running shed, Lucknow who along with his daughter Ku-mari Kunwari Devi, lost his life in a railway accident that took place on the night intervening 20/21-2-74 at Kathghar near Moradabad Junction.

3. According to the claimants, on 16-2-74, Sri Ram and his daughter Km. Kunwari Devi, aged about 16 1/2 years had gone to Haridwar to have a dip in Ganges on the occasion of Maha Shiv-ratri which fell on 19-2-74, both of them were returning by 66 DN. Vara-nasi Janta Express train which collided with a stationary goods train at Kathghar near, Moradabad. As a result of this accident, both Sri Ram and Km. Kunwari Devi were killed. The claimants urged that apart from Sri Ram, Km. Kunwari Devi was also earning a sum of Rs. 150 p. m. by tailoring, embroidery and knitting etc. and that they were dependants not only

on Sri Ram but also on Km. Kunwari Devi; they therefore claimed compensation amounting of Rs. 1 lakh i.e., Rs. 50,000 for each of the two deaths.

4. The claim was contested by Union of India, which admitted that Sri Ram died in the accident, but denied that any person by the name of Km. Kunwari Devi had died in that accident. It pleaded that as at the time of the accident the two deceased were not bona fide passengers, it was not liable to compensate the claimants for their deaths. It also claimed that as in any case the claimants could not be the dependants on Km. Kunwari Devi who was merely a minor aged about 16 1/2 years they are not entitled to recover any compensation in respect of her death. Various other pleas were also taken but then it is not necessary to mention them here at this stage.

5. After going through the evidence produced in the case, the Claims Commissioner found that Km. Kunwari Devi was also travelling and that she also died as a result of the railway accident. He also found that Km. Kunwari Devi was earning Rs. 150 p. m. and she along with her father had been supporting the claimants who were dependant upon her as well. However, the Claims Commissioner after taking into consideration various circumstances mentioned by him, came to the conclusion that as it had not been shown that at the time of the accident, Sri Ram and Km. Kunwari Devi were travelling with ticket, they did not fall in the category of bona fide passengers and as such, no compensation u/s 82-A of the Indian Railways Act was payable to the claimants in respect of their deaths. Being aggrieved, the claimants have come up in appeal before this Court.

6. Sri Sushil Harkauli, learned counsel appearing for the claimants who argued this appeal with ability and fairness, impugned the order passed by Claims Commissioner on following two grounds:--

1. The Claims Commissioner was wrong in proceeding on the basis that the liability of the railway to pay compensation u/s 82-A was confined only in respect of death of a bona fide passenger.

2. The finding of the Claims Commissioner that Sri Ram and his daughter Km. Kunwari Devi were not bona fide passengers, is wrong and is not borne out by evidence on the record.

So far as the first submission made by Sri Harkauli is concerned, he very fairly brought it to our notice that the view taken by claims tribunal that the passenger for whose death compensation becomes payable u/s 82-A of the Indian Railways Act must be a bona fide passenger in the sense that he should, at the time of accident, have been travelling in the train either with ticket or under some authority, and that the expression passenger as used in Section 82-A does not cover within its ambit, a- passenger who travels without ticket, is in consonance with a view expressed by Punjab and Patna High Courts in this regard; he urged that the claims tribunal and Punjab and Patna High Courts did not interpret the provisions of Section 82-A of the Act correctly. According to him the word, "passenger" as used in Section 82-A includes within its ambit any person

travelling by train* from one place to another either with or without ticket or some other authority.

7. Prior to insertion of Section 82-A in the Indian Railways Act in the year 1943, the liability to pay compensation for the loss of life or injuries sustained by a person, while travelling in a train flowed from the law of Torts. At that time, true position under the law was that liability of the Railway Company to pay compensation for the death or injury sustained by a person travelling by a passenger train accrued only when it was shown that injury to or death of the passenger was caused by some negligent or rash act of the railway administration or its employee and that the person who died or sustained injuries was a person who was not a trespasser i.e. he was a person who at that time was travelling as a passenger on the authority of a Railway ticket or otherwise with the consent of the Railway administration. It was, however, realised that the liability of the railway, to pay compensation in respect of injury or death suffered by passengers travelling by railways should be liberalized, and accordingly a bill for the insertion of a new Section 82-A in the Indian Railways Act was introduced with the following objects and reasons :

"Under the existing provisions of the law, no compensation is payable to those injured or to the dependants of those killed in a train accident that is not due to negligence on the part of the railway administration or its servants. Considerable hardship has been caused in consequence particularly amongst the poorer classes, as dependents of those killed or injured in accident due to sabotage for example, were unable to obtain any compensation for the loss they have sustained. The bill seeks to remedy this state of affairs by rendering railways liable to pay compensation in all train accidents whether due to negligence or not, but to limit the liability in all such cases to a fixed sum in the case of any individual passenger." (Published in the Gazette of India, dated 19th September, 1942 page 139).

Eventually, the Legislature, passed Indian Railways Amendment Act III of 1943 and introduced a new Section 82-A in the Indian Railways Act which runs thus :--

"82-A(1) 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 direct 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 direct result of such accident,

(2) The liability of a railway administration under this section shall in no case exceed fifty thousand rupees in respect of any one person."

8. According to this section, the Railway Administration has been notwithstanding any other provision of law to the contrary, made 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 as a result of an accident taking place in the circumstances mentioned therein. It provides that the liability so incurred by the railway administration would be there irrespective of whether there has been any such wrongful act, neglect or default on the part of the railway administration as would entitle a person who has been injured or has suffered loss, to maintain an action and to recover damages therefore, clearly the liability of the railway administration incurred under this section is by way of amplification of a liability to pay compensation arising in similar circumstances under any other law including that accruing under the law of Torts.

9. Sri Harkauli, argued that the word "passenger" occurring in Section 82-A has not been defined in the Indian Railways Act. The word "passenger" would mean a person who boards a train with a view to travel from one station to another. There is nothing in Section 82-A of the Act to restrict the meaning of the expression only to such passengers who travel by train after either purchasing ticket or under some express or implied authority from the railway administration, He invited our attention to a number of sections in the Indian Railways Act, wherein a provision concerning passenger has been made.

10. In particular he invited our attention to Section 113, relevant portion of which runs thus :--

"If a passenger travels in a train without having a proper pass or proper ticket with him he shall be liable to pay on demand of any railway servant appointed by railway administration in this behalf, the excess charge hereinafter in this section mentioned in addition to the ordinary single fare for the distance which he has travelled or...."

He urged that this Section clearly postulates that a person can travel as a passenger even though he is travelling without a proper pass or ticket. Likewise, Section 118 provides as follows :--

"(1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or open the side door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

(2) If a passenger after being warned by a railway servant to desist, persists in travelling on the roof, steps or footboard of any carriage or on an engine, or in any other part of train not intended for the use of passenger he shall be punished

with fine which may extend to fifty rupees and may be removed from the railway by any railway servant."

He invited attention to the case of *Nur Muhammad v. Emperor* 1905 (31) P&h 66, and *Emperor v. Bulakhi* (1909) 5 Nag LR 151 wherein it had been held that under this Section the word "passenger" includes within its ambit a trespassing passenger as well. Learned counsel urged that if in this section the meaning of the word "passenger" is confined only to person travelling with ticket or under some express or implied authority of the railway administration, it will lead to an absurdity viz. whereas for the contravention of the provision of this section it will be possible to deal with the bona fide passenger it would, in similar circumstances, not be possible to take action against persons travelling without authority. In this context it is not possible to attribute any such intention to the legislature. He also referred us to Section 68 of the Indian Railways Act relevant portion of which runs thus :--

"(1) No person shall without the permission of 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 when 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."

This according to him clearly shows that the Railways Act contemplates any person travelling by train, whether h" travels with or without ticket or authority to be a passenger. He also urged that likewise in Sections 108 and 109 of the Indian Railways Act if the word "passenger" is not interpreted as including persons travelling without a valid pass or ticket, it would lead to absurdity. Learned counsel also invited our attention to some other provisions like Sections 60 to 65 of the Indian Railways Act, and contended that a resume" of aforementioned provisions of the Indian Railways Act clearly shows that for the purpose of those sections even such persons who do not hold a valid ticket or pass but who travel from one station to another are also considered to be passengers. He then went on to rely upon the principle that unless there is something compelling in the context the words appearing in different sections of an enactment should be given the same meaning, and urged that as there is nothing in the context to justify giving to the words "passenger" as used in Section 82-A a meaning different from that which can be given to it under various sections mentioned above, it must be interpreted in the same way. So interpreted it will mean that even persons travelling by train without the authority of a ticket or a pass issued by the railway administration were also to be considered to be passengers within the meaning of the expression as used in Section 82-A.

11. So far as the general principle of interpretation mentioned above is concerned, Sri Harkauli cited a number of cases before us and it may be accepted that unless there is something in the context, in which a word has been used in a particular section, the words used in various Sections of the statute should be given the same meaning. It may also be accepted that in a number of sections of the Indian Railways Act, the word "passenger" has been used in a wider sense, namely as also including within its ambit persons travelling by a train without possessing a valid ticket or a railway pass. The question, however, that arises for consideration is as to whether there is something in the context of Section 82-A to show that the passenger for whose death liability is being fastened on the Railways Administration is intended by the legislature to be a person travelling in a train in a bona fide manner i.e. under the authority of a ticket or pass issued by the Railway Administration,

12. What Section 82-A (1) lays down is that whenever a railway accident, of the nature specified therein, takes place, the railway administration is liable to pay compensation, to the extent set out in Sub-section (2), for loss occasioned by death of or injury to a passenger whether or not the accident took place as a result of such wrongful act neglect or default on the part of the railway administration as would have entitled the person who had been injured or had suffered loss, to maintain an action and recover damage in respect thereof. The provision in the section that the liability of the railway administration to pay compensation for the loss or damages suffered in a railway accident would be there, whether or not the accident took place as a result of some act, neglect or default on the part of the railway administration as would have entitled a person who has been injured or had suffered loss, to maintain an action to recover damages in respect thereof, shows that what the legislature intended to do was to extend the liability of the railway administration to pay compensation for the loss or damages suffered by a person who would normally have been entitled to recover the same if the accident had taken place because of some wrongful act, neglect or default on the part of railway administration, also in cases where there was no such wrongful act, neglect or default on its part.

The section while extending the liability of the railway administration to pay compensation even without proof of wrongful act, neglect or default on its part to those who would have been entitled to it in case they could prove some wrongful act, default or neglect on the part of the railway administration indicates that the Legislature did not intend to create a new class of persons who were being made entitled to receive compensation. This becomes evident from the statement of objects and reasons for enacting the Section 82-A as published in the Gazette of India dated 19th September 1942 Part V page 139 wherein it was mentioned that "under the existing provisions of the law no compensation is payable to those injured or to the dependents of those killed in train, accident that is not due to negligence on the part of the railway administration or its servants. Considerable hardship has been caused in consequence, particularly amongst the poorer classes, as dependents of those killed or injured in accident due to

sabotage for example, were unable to obtain any compensation for the loss they have sustained. The bill seeks to remedy this state of affairs by rendering railways liable to pay compensation in all train accidents whether due to negligence or not, but to limit the liability in all such cases to a fixed sum in the case of any individual passenger." Statement of this object and reason for introducing Section 82-A of the Indian Railways Act clearly indicates that the intention of the Legislature in introducing Section 82-A was to enable the class of persons who according to the law as it stood at that time were entitled to receive compensation on the death of a passenger after proving wrongful act, neglect or default on the part of the railway administration, to receive such compensation even without proving any wrongful act, neglect, or default on the part of railway administration. The object of the legislature was not to create a new class of persons who were to become entitled to receive compensation for the death or injury caused to a passenger or his property,

13. We are accordingly, of opinion that u/s 82-A (1), a railway company has been made liable to pay compensation for the death, personal injury or loss suffered by only such a person in respect of whose death, injury, or loss an action could have been entertained prior to insertion of Section 82-A in the Indian Railways Act, and that compensation in respect of death of such a person, can be claimed even without producing evidence to show that the accident had taken place because of some wrongful act, neglect or default on the part of the railway administration.

14. Having regard to the state of law as it prevailed before insertion of Section 82-A in the Indian Railways Act, it is not disputed that liability of the railway company to pay compensation for the death or loss of the nature specified in Section 82-A was enforceable in accordance with the law of Torts whereunder the railway company could have been made liable for the death of or injury to a bona fide passenger travelling on the basis of a pass or ticket or some other express or implied authority of railway administration. We accordingly, find no merit in the submission, that the appellants were entitled to receive compensation u/s 82-A of the Railways Act even if the finding recorded by the claims tribunal, that Sri Ram and Km. Kunwari Devi were not bona fide passengers in the sense that they were not travelling on the basis of a railway ticket or railway pass issued by the railway administration, is allowed to stand.

15. We now come to the second submission made by the learned counsel, namely, that the Claims Commissioner was not justified in holding that in the circumstances it had been shown that Sri Ram and Km. Kunwari Devi were travelling without ticket and that they were not bona fide passengers.

16. The reason given by Claims Commissioner for holding that Sri Ram and his daughter Km. Kunwari Devi were not bona fide passengers at the time of the accident was that they did not possess a valid ticket or pass. Briefly stated the fact was that Sri Ram was getting Rs. 250/- p. m. only as railway servant and was posted at Lucknow. He was entitled to get certain number of free passes and

P.T.Os from the railway administration on the basis of which he and members of his family could travel. All passes and P.T.O.s which had been issued to Sri Ram in the year 1973 and prior to the accident had been fully utilised by him and were not available for his and his daughter's journey on 21-2-1974 when the accident in question took place. Sri Ram did not obtain any pass or P. T. O. for travelling in the year 1974. Distance between Lucknow and Hardwar was about 540. Km. and the railway fare for journey between the two stations come to Rs. 20/- Sri Ram therefore had to spend a sum of Rs. 80/- on his and his daughter's railway fare. It was rather unusual for a railway servant drawing salary of Rs, 250/- p. m. only to spend a sum of Rs. 80/- on railway fare specially when all his passes and P. T. Os were available to him on 17-2-1974 when according to the claimant Sri Ram had decided to go to Hardwar for having a dip in river Ganga. The explanation that it would have taken Sri Ram some time before he could procure the passes for travelling to Hardwar, and that is why he decided to go to Hardwar after purchasing "railway ticket did not appeal to the Claims Commissioner who held that in the circumstances it was difficult to believe that Sri Ram and his daughter were at the time of the accident travelling with ticket. The Claims Commissioner recorded his conclusion in this regard in following words :--

""If he was a very religious minded man he in the ordinary course of human conduct would have planned and waited for this Maha Shivratri Parva for having a dip in the holy Ganges at Hardwar from long before and could have arranged the issue of pass and even if the daughter's programme was made at the nick of the time her journey would have also been covered by the set of passes he would have got issued for his own self. His own pay was insufficient to meet the expenses of the family and that is why his daughter was also earning. Under such tight financial conditions it is difficult to accept that a railway servant entitled to passes and P. T. Os would spend a considerable sum of Rs. 80/- on railway fare."

17. Having given our careful consideration to the observations made by the Claims Commissioner we are of opinion that the conclusion arrived at by him in this regard cannot be sustained. It is well known that each year only limited number of passes and P. T. Os are issued to railway servants. The journey in the instant case is said to have been performed in the month of February 1974 i.e. in the very beginning of the year, Sri Ram was not performing the journey with his entire family. It is not uncommon for the railway servants to avail their passes or P. T, Os in the beginning of the year, so that the same may become available to them at the time when they need them most. In these circumstances it cannot be said that conduct of Sri Ram in undertaking the journey from Lucknow to Hardwar, after purchasing tickets on 16th of February 1974 was a conduct which was unnatural or improbable. Further, we do not agree with the Claims Commissioner when he states that sudden decision taken by Sri Ram to go to Hardwar to have holy dip was unnatural inasmuch as being a religious minded person he must have made plans to go to Hardwar well in advance and that in

case he wanted to perform the journey to Hardwar in a bona fide manner he would have taken steps to procure the railway passes well in time. We see no reason to think that merely because Sri Ram was said to be religious minded person, he must necessarily have, as has been presumed by Claims Commissioner, made a programme to visit Hardwar for having holy dip in river Ganga on the occasion of Maha Shivratri Parv from long before. There is nothing on the record to show or even to suggest that though Sri Ram was a religious minded person he used to go to Hardwar on the occasion of Shivratri every year. His being a religious person did not mean that he had necessarily to go to Hardwar on the occasion of Shivratri. In the circumstances a sudden decision by Sri Ram to go to Hardwar is, to our mind not inconsistent with his being a religious minded person. In the circumstances there is nothing surprising if, when Sri Ram decided to go to Hardwar, he was not in a position to obtain any pass or PTOs for the journey to be performed by him and his daughter.

18. Only a sum of Rs. 80 was required by Sri Ram for paying his and his daughter's fare. This amount is not so exorbitant that it was not possible for Sri Ram to have spent it from out of his salary amounting to Rs. 250 which he had received on 6-2-1974. Moreover, while travelling from Lucknow to Hardwar, Sri Ram was going from a division in which he was posted to a place in another division where the railway officials may not be knowing him. In case he was caught travelling without ticket, he was likely to lose his job. In our opinion, he was unlikely to take such a great risk. We find from the list prepared by the railway administration showing the articles found on the person of Sri Ram, that he did possess a ticket for travelling between Rishikesh and Hardwar. This shows that after visiting Hardwar, Sri Ram had also gone to Rishikesh and that he had done so after purchasing a ticket. This fact is not consistent with the suggestion made by learned counsel for the Railways that Sri Ram being a railway servant was unlikely to purchase a railway ticket for performing a railway journey. In the circumstances there is no reason to think that Sri Ram did not purchase a ticket for travelling between Hardwar and Lucknow, merely because after the accident no ticket was found either on his person or on the person of his daughter. It is quite likely that during the accident the ticket purchased by Sri Ram might have fallen away. Such a likelihood becomes all the more greater in the instant case in view of the fact that no money or cash which Sri Ram must have been carrying, is said to have been recovered either from the person of Sri Ram or from that of his daughter,

19. In the result, we do not accept the reasons given by the Claims Commissioner for holding that it was unlikely that Sri Ram was not a bona fide passenger at the time of the accident, The evidence on the record indicates that on 16-2-1974 before proceeding to Hardwar along with his daughter, Sri Ram had received his pay amounting to Rs. 250. There was nothing surprising if he carried the amount as mentioned by the witnesses that Sri Ram had after giving some money to his wife, taken the balance for performing the journey to Hardwar, Evidence produced in the case discloses that Sri Ram had in fact

purchased ticket for performing a part of the journey between Rishikesh and Hardwar. In these circumstances, there is no reason to think that he did not purchase a ticket for performing the journey between Hardwar to Rishikesh, merely because he was a railway servant and the railway fare for him and his daughter came to Rs. 80.

20. In the result, we are unable to agree with the Claims Commissioner that it had been shown that Sri Ram and his daughter were not bona fide passengers and that no compensation was payable in respect of their death.

21. Learned counsel appearing for the railways has not been able to advance any argument for criticising the finding of the Claims Commisisoner that at the time of accident Km. Kun-wari Devi was also travelling in the train along with her father, Sri Ram. He conceded that if, it is found that Sri Ram and Km. Kunwari Devi were bona fide passengers, the claimants would be entitled to recover compensation amounting to Rs. 50,000 for the death of each one of them. The total compensation will thus come to Rs. 1 lac.

22. The appeal, therefore succeeds and is allowed. The order of the claims tribunal is set aside. The claim made by the appellants is accepted for 1 lac, i.e. Rs. 50,000 for the death of Sri Ram and a like amount for the death of Km. Kunwari Devi. D/- May 16, 1979.

Sri Lalji Sinha appearing for the respondents requested for a certificate under Article 133 of the Constitution of India. The decision in the appeal has gone against the Union on a question of fact, viz. whether Sri Ram and Km. Kunwari Devi were bona fide passengers or not. The proposed appeal does not, in our opinion involve any substantial question of law of general importance which needs to be decided by the Supreme Court. The prayer made by Sri Sinha is rejected.