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(1984) 03 AHC CK 0010

In the Allahabad High Court

Sundari and Others — APPELLANT

Vs

Union Of India (UOI) and Another — RESPONDENT

Date of Decision : 30-03-1984

Acts Referred:
Railways Act, 1890 — Section 83F

Citation : (1984) 1 ACC 211 : (1984) 2 RCR(Criminal) 292

Hon'ble Judges : K.N. Singh, J;K.C. Agrawal, J;B.N. Sapru, J

Bench : Full Bench

Judgement

K.C. Agrawal, J.—This First Appeal From Order filed u/s 83-F of the Indian Railways Act, 1890, has been preferred against the judgment of the Adhoc Claims Commissioner appointed u/s 82-B of the Indian Railways Act (hereinafter referred to as the ''Act''), dismissing the claim of the appellants for compensation u/s 82-A.

2. A claim of Rs. 50,000/- had been preferred by the appellants for the death of Suraj Prakash, son of Smt. Sundri appellant no. 1 and brother of appellants 2 to 4. Suraj Prakash was 18 years of age at the time of his death. He was travelling with his father Chet Ram by 66 Dn. Janta express from Hardwar to Bareilly when this train collided with a stationary goods train at Katghar near Moradabad. Both father and son died in this accident on the spot. The appellants claimed that both the persons were travelling on a railway pass issued to Chet Ram as railway servant.

3. The claim was contested by the Union of India on a number of grounds. We are, however, concerned only with one ground about the entitlement of the appellants to get the compensation. The Union of India claimed that Suraj Prakash since was not a bona fide passenger, the appellants could not get compensation u/s 82-A.

4. The claims Commissioner upheld the contention of the Union of India and held that Chet Ram had by a misrepresentation obtained the pass for Suraj Prakash,

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his son, the deceased, The latter was not a bona fide passenger at the time of accident and so no compensation could be claimed for his death by the appellants. On this view, the claim petition was rejected. Against this judgment, the present appeal has been preferred u/s 82-F by the appellants who claimed themselves to be the dependants of the deceased.

5. At the time of hearing of the appeal, reliance was placed by the Union of India on a case of this Court reported in Smt Yashoda Devi and Ors. v Union of India and Ors. AIR 1979, Allahabad, 287, where a Division Bench held that the word "passenger", as used in S-82-A, did not include within its ambit a person travelling by train from one place to another without ticket or some other lawful authority.

6. Doubting correctness of the aforesaid decision, the Division Bench of this Court referred the present appeal to a larger Bench for deciding the question whether the law laid down in the aforesaid decision was correct, hence this Full Bench was constituted.

7. For the purposes of deciding the controversy, we may make a brief reference to the relevant provisions. At the threshold, It may be noted that the word passenger has not been defined in the Act. Sections 62 to 71 of the Act deal with carriage of passengers. Section 66 lays down that every one who is desirous travelling on a railway shall, upon payment of his fare, be supplied with a ticket. Section 68 imposes a prohibition against travelling without pass or ticket. It provides that no person shall, without 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. Section 113 is in Chapter IX and deals with penalties and offences. u/s 113, penalties can be imposed on a person who travels without a pass or ticket or having an insufficient pass or ticket or travelling beyond the distance authorised by the ticket or the pass which he holds. It also deals with cases where a passenger travels in a higher class to which he is entitled to by virtue of the ticket he possesses. Section 122 deals with trespass and refusal to desist from trespass. Under this section, a railway servant empowered to do so would be entitled to remove a person travelling in contravention of the provisions of the Act.

8. From a review of the provisions stated above, it would be found that a person has to pay the requisite fare for travelling from one place to another or that he has been granted permission by a railway servant u/s 68 to travel if he is not able to procure a ticket. Upon the permission being granted, such person could be subsequently required to pay the fare for the distance to be travelled. A person holding a proper pass can also travel and in that event his travelling would be lawful. Travelling of a person on a pass would be considered to be on.

9. Before the insertion of Section 82-A by the Amending Act III of 1943, the general rule was that a carrier of passenger was not as absolutely liable for the

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safety of passengers as a carrier of goods is for the safety of the goods, but was liable for the injuries to passengers which were caused by its neglect in failing to exercise the proper degree of care, skill, and diligence for passenger''s safety. In other words, the railways could be sued in tort for compensation or damages. For the purposes of succeeding in such a claim, the law required negligence to be established against the railways. In 1942, it was felt that when an accident occurred and the railway was held free of liability on account of the heirs and legal representatives or dependants failing to prove negligence of the railway in such a matter, that was likely to cause great hardship to the dependants. In 1942, the Dacca Mail met with an accident at Joya Rampur in Bengal. On that occasion, the Bengal Government urged the Government of India the possibility of paying compensation through the medium of Insurance scheme. This question was considered by the Government of India. The government thought that making it compulsory to implement the insurance scheme in such a matter was not free from difficulty, specially for the poor class of people. The Government of India, thereafter, proposed by means of a Bill, which was presented by the Law Minister on 22nd September, 1942. Dealing with the requirement of obtaining insurance, the Law Minister felt that some sort of compensation should be paid to the dependants, but making of a provision to obtain an insurance was not possible. To meet the situation, he observed:

The only possible method, therefore, appears to be taken, each ticket carry some insurance. We do not want to propose that there should be an additional charge for this purpose, one reason being that, with a very large number of passengers that we carry any insurance scheme would involve the levy of so small a charge which we could possibly make, namely, one pie, would result in a sum very much in excess of what we have been paying out in compensation in the past. It is, therefore, proposed that railway revenues shall carry the liability involved.

10. With this end in view, the proposed Bill was discussed and was ultimately referred to the Select Committee. The Statement of objects and Reasons is given below :

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 a railway administration or its servants. Considerable hardship has been caused in consequence, particularly amongst the poorer classes, as dependants of those killed and injured in accidents due to sabotage for example, were unable to obtain any compensation for the loss they had sustained. The Bill seeks to remedy this state of affairs by rendering railway liable to pay compensation ''in fall train accidents whether due to negligency or not, but to limit the liability in all such cases to a fixed sum in the case of any individual passenger.

11. Before the reference to the Select Committee was made, some of the Members suggested that Sub-Section (2) of Section 82-A, as was proposed to be amended, admitted of several defects. Members thought that even genuine

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passengers who had purchased ticket and did not possess them at the time of the accident occurring for one reason or the other, their dependants'' claim for compensation was likely to fail. Some other Members asked about the entitlement of the dependants of the ticketless passengers to get compensation. The Law Minister did not agree that any provision for the dependants of ticketless travellers to get compensation should be made in the Act. The relevant portion of the speech of the Law Minister with respect to the ticktless passengers is being extracted below :

My honourable friend, Sir Cowasji Jahangir, suggested that every one should benefit whether he had a ticket or not. As I pointed out in my speech this scheme is a form of insurance-every ticket will carry some insurance. I would ask my honourable friend, whether if he fails to pay his premium in this case if he fails to take his ticket, the insurance company would pay him the insurance which is not due to him

12. The report of the Select Committee thereafter submitted was presented to the Legislative Assembly on the 10th February, 1943. Section 82-A, as was previously proposed, is quoted below :

82-A. (I) 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, he 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 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 a direct result of such accident. (2) The liability of a railway administration under this section shall in no case exceed seven thousand rupees in respect of any one person and a railway administration shall not incur any liability under this section in respect of any person being a passenger on a train if such person is travelling without having with him a proper pass or ticket.

13. The Selection Committee, however, recommended for an amendment of Sub-section (1) as well as Sub-section (2) in the proposed Bill. The relevant portion of its report dealing with Sub-section (2) of Section 82-A is extracted below :

We have increased the limit set to the liability of a railway administration from seven thousand rupees to ten thousand rupees and we have omitted the provision which specifically debarred a passenger travelling without having with him a proper pass or ticket from having any right of compensation if involved in an accident.

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14. Under Sub-section (1) of Section 82-A, the dependants of a deceased passenger are entitled to get compensation as well as the passenger for his injury. For the former, the maximum had been fixed at that time at Rs. 10,000/-. Under this section, in the event of an accident taking place, the dependants become entitled to get compensation in case of death of a passenger occurring in it. The case of the Union of India before the court below as well as before us was that under Sub-section (1) of Section 82-A, only the dependants of a passenger are entitled to get compensation. According to the Railway, Sub-section (1) will apply only to a case of a bona fide passenger who was travelling with a ticket, pass, or permission and will not entitle the heirs of a ticketless traveller to get compensation. This argument of the Railways was encountered by the learned Counsel for the appellants by submitting that the word "passenger" has to be given a wide meaning and there being nothing either expressly or impliedly in the Act that the benefit of Section 82-A could not be given to a ticketless passenger, this section could not be interpreted to be applicable only to the case of a bona fide passenger. According to the appellants, to say that Sub-section (1) of Section 82-A and Sub-section (2) of Section 82-A did not apply to the case of ticketless travellers and only to a bona fide passenger, would amount to legislating by the Court by providing for the word "bona fide", which cannot be done by it.

15. Learned Counsel took us through the various provisions of the Act and urged that the word "passenger" has been used in the Indian Railway Act in the wider sense, that is, including within its ambit persons travelling by a train without proper pass or ticket. Reference made by the learned Counsel was to Sections 68, 108, 109, 113, and 118 of the Indian Railway Act.

16. In our opinion, the submission of the learned Counsel is not well founded. The word "passenger has not been defined in the Act. However, if we were to refer to the Scheme of the Act and the relevant provisions, there would be no difficulty in finding that for being a passenger within the meaning of the Act, he must be a person travelling with a ticket, pass or permission of the Railway Authority.

17. The meaning of the word "passenger", as given in Black''s Law Dictionary is "a person whom a common carrier has contracted to carry from one place to another." In connection with the relationship of carrier and passenger, in American Jurisprudence, Volume 14, paragraph 740, the American law stated is :

In accordance with the principles discussed in the preceding section, a "passenger" in the present connection and in the legal sense of the term, has been defined generally as one who travels in a public conveyance by virtue of a contract, express or implied, with the carrier as to the payment of fare, or that which is accepted as an equivalent thereof. A "passenger" has also been defined as a person whom a common carrier has contracted to carry from one place to another and who, in the course of the performance of that contract, has been received by the carrier under its care, either upon the means of conveyance, or

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at the point of departure of that means of conveyance. Hence, the two main elements in the legal definition of a "passenger", so far as a carrier is concerned, are an undertaking on the part of a person to travel in the conveyance provided by the carrier, and an acceptance by the carrier of the person as a passenger.

18. A consideration of Section 66, 68, 113, and 122 of the Act would indicate that a person assumes the status of a passenger and becomes entitle to all the rights and privileges accruing from such relationship when he travels either on ticket or on pass or with permission of the authorised officer.

19. Great emphasis was laid before us by the learned Counsel on the speeches which were made by the Members constituting the Legislative Assembly at the time of making of reference of the Bill proposing Section 82-A in the Statute Book. Sub-section (2) of Section 82-A, as proposed, laid down the requirement of physical possession of the ticket with the passenger. In respect of this matter, certain difficulties, were pointed out. The Select Committee amended Sub-section (2) of Section 82-A and omitted the words which were capable of the aforesaid interpretation. After deletion of those words, no one could be deprived of compensation u/s 82-A on account of physically not possessing the ticket with him at the time of receiving the injury of the death. The Law Minister did not agree with the suggestion of some of the Members that the ticketless travellers should be kept at per with the passengers who have purchased tickets or were travelling on proper passes. From the speech of the Law Minister, it would appear that the intention was to provide a sort of insurance to the persons travelling so that their heirs and legal representatives could be indemnified if an accident takes place. A contract of insurance in the widest sense of the term is understood as a contract whereby one person, called the insurer, undertakes, in return for the agreed consideration on the premium to pay to another person called the assured, a sum of money or its equivalent on the happening of a specified event.

20. On a consideration of the legislative history and the provisions of Section 82-A, our view is that only the dependants of a bona fide passenger are entitled to get compensation in the event of death occurring in an accident. Section 82-A does not entitle the dependants of a trespasser to get benefit of the same. A trespasser does not occupy the status of a passenger. It is true that the railways have a duty not to injure the trespassers want only or willfully but that does not entitle the heirs to get compensation u/s 82-A.

21. The Patna High Court in Ramchandra Prasad Sinha Vs. Union of India (UOI) and Another, , was called upon to consider the question whether Section 82-A could be availed even by a ticketless traveller or a trespasser. After making a review of the relevant provisions of the Railway Act, the Court observed :

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

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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.

22. We find ourselves in respectful agreement with the view taken in this case. To the same effect is the opinion of the Punjab High Court taken in Union of India (UOI) Vs. Sardarni Harbans Kaur and Others, In that case, the deceased travelled by a goods train without a ticket and died as a result of an accident. There was neither explicit nor implied consent of the railway in regard to his travelling by that train. In a suit for recovery of damages, 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 a person who travels contrary to a bye-law and against the wishes of a railway servant is a trespasser and he cannot recover damage if as a result of negligence of the carrier he suffers injury.

23. In coming to the above conclusion, the Punjab High Court, with which the Patna High Court agreed, relied on the decision reported in Grand Trunk Railway Company of Canada v. Walter C. Barnett AIR 1911 AC 361. The Privy Council in this case held that the trespasser was not entitled to get damages. Lord Robson observed :

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.

24. In Rajammal Vs. The Union of India (UOI), , the case of a person who had really paid the fare into the hands of the ticket examiner, who had the power to receive the railway fare on behalf of the Railway Department and issue a receipt therefore. The Madras High Court held that the deceased was not a trespasser but a bona fide passenger. In that case, since payment of fare had been made, the benefit of Section 82-A was given to the heirs of the deceased treating him to be a bona fide passenger.

25. Learned Counsel for the appellants next urged that from the amendment of Sub-section (2) of Section 82-A, as it was proposed initially in the Bill, the clear intention to be necessarily found from the amended section was that the legislative intent was that the dependants of any person killed as a result of railway accident, who was travelling in a train, were entitled to claim compensation irrespective of the fact whether he had or did not have a valid ticket or pass. We are unable to accept the submission. It appears to us that Sub-

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section (2) was amended by the Select Committee not for the purpose of covering the dependants of a ticketless traveller, but for a different purpose, which we have already elaborated above. The said purpose was that the possession of a ticket by a passenger at the time of accident was not necessary, and that on proof being furnished by the dependants that the deceased had travelled with a ticket, pass or permission, they could get compensation. It may be true that in some cases it may be difficult for the dependants to prove the purchase of ticket or permission having been obtained before hand by the deceased from a railway servant authorised to give it, but that cannot change the interpretation of Sub-section (2) of Section 82-A. The anxiety of the Members discussing the Bill, as a result of which the same was sent to the Select Committee, was mainly for not insisting on physical possession of the ticket by the deceased passenger. With respect to the speeches made by the Members, for compensation being paid to the dependants of the ticketless travellers also, it may be pointed out that at best the same was indicative of the subjective intent of the speaker, and that it did not reflect the mental force dying behind the majority vote which carried the Bill.

26. At this place, we may make a reference to the definition of the word "passenger" given in the Railway Passengers Fare Act, 1971. Section 2 (b) of the said Act defines a "passenger" as meaning any person on a railway in any description or class of trade or carriage on payment of his fare, whether at full rates or at concessional rates. The definition given of this expression "passenger" in Inland Air Travell Tax Act, 1971, Section 2(e), is to the Similar effect. It says that any person travelling on Board and Air Craft on an inland journey on payment of his fare, whether at full rates or concessional rates. To us it appears to be incorrect that the legislature had ever thought of covering a trespasser also for the purpose of giving benefit to the dependants and heirs in case of an accident taking place. The entire anxiety was to provide for a sort of insurance scheme for the deceased so that in the event of an accident taking place, his dependants could get the amount specified in this section. The legislature could not and did not think of conferring the benefit to a trespasser who is liable to be removed on account of his occupation being illegal.

27. In Simmons v. Oregon Railway Company 69 PREP 1022 (P), it was held by Bean, J, at page 1023 :

Generally speaking, a passenger is one who travels in a public conveyance, by virtue of a contract, express or implied, with the carrier, and a carrier of passengers is one who undertakes to carry persons from place to place gratuitously or for Hire.

28. In Halsbury''s Laws of England, Vol. 38, Fourth Edition, Paragraph 932, the position stated is thus

No one has a right to enter a train except under a contract of carriage and a person entering a train without previously having purchased a ticket may be

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removed from the carriage even though he is willing to pay the fare. The failure to produce a ticket on demand is prima facie evidence of fraud...

29. The Supreme Court recently deal with the menace of the ticketless travelling in Dr. P. Nalla Thampy There v. Union of India and Ors. 1984 Unreported Cases, page 42. The Supreme Court noted the discomfort of the passengers caused by ticketless travelling in the following words:

Ticketless travelling has to be totally wiped out. We are of the view that it is this class of passengers which is menace to the system. Without any payment these law breakers disturb the administration and genuine passengers. Stringent laws should be made and strictly enforced to free Railways from this deep rooted evil.

In our opinion, Section 82-A does not cover a trespasser.

30. It was submitted that the construction of the word "passenger" made by the Division Bench in Smt. Yashoda Devi and Ors. v. Union of India (supra) is contrary to the principles of interpretation of a "beneficent legislation". It was argued that the word "passenger" if interpreted to mean only a person travelling with proper ticket or pass, it would take away the beneficent purpose from Section 82-A. The object of enactment of Section 82-A was no doubt a beneficial one for providing monetary help in the event of a passenger suffering injuries in an accident or giving compensation to the dependants of a deceased in the event of an accident taking place. Section 82-A has prescribed certain requirements as preliminary to the acquisition of benefit conferred by the Statute, and such prescriptions are mandatory for getting its advantage.

31. In Edwards Ramia Ltd. v. African Woods Ltd. 1960 1 All ER 627(PC), the Privy Council has said that if a Statute confers a concession or privilege and prescribes a mode of acquiring it, the mode so prescribed must be adopted as even affirmative words in such cases are construed imperative.

32. To accept the submission of the appellants'' learned Counsel and to hold that Section 82-A could be availed even by the dependants of a trespasser would amount to legislature by the Court which a court of law is not entitled to do. It is firmly established that the intention of the legislature must be found by reading the Statute as a whole. This rule has been called as elementary rule by Viscount Simonds.

33. In Poppatlal Shah Vs. The State of Madras, , Mukherjee, J., (as he then was), said that one must look at the whole of the instrument for finding out the intention of the framer of the Act. By applying the rule of interpretation that a right construction of the Act can only be attained if its whole scope and object together with an analysis of its meanings and the circumstances in which it was enacted, we are of opinion that the Division Bench in Smt. Yashoda Devi v. Union of India (supra) rightly held that Section 82-A does not include within itself a trespasser or a person travelling without ticket, pass or authority.

34. For these reasons, we hold that the view taken in Smt. Yashoda Devi v. Union

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of India (supra) is correct.

35. Let the papers be returned to the Bench concerned with the aforesaid answer.

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