
(2012) 08 KL CK 0258
In the High Court Of Kerala
Case No : M.F.A. No. 120 of 2012

Union of India

APPELLANT

Vs

Deena, T.

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Railways Act, 1989 — Section 123(c)(2), 124A

Citation : (2013) 1 ACC 399 : (2013) ACJ 446 : (2012) 4 ILR (Ker) 116 : (2012) 4 KLJ 206

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : John Mathew S.C., Railways, for the Appellant;

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The plea of the Railways in this appeal against the award of the Railway Claims Tribunal is that the

deceased was not a bona fide passenger inasmuch as the ticket he possessed was one issued on 7-7-2010 from Varkala Railway Station, though

he was travelling in the train that left from Varkala to Chennai on 8-7-2010. At the outset, we may record that earnest efforts are taken by the

learned standing counsel for Railways by making reference to the Indian Railway Commercial Manual which, among other things, in Clause 239

provides that the tickets are available only for the day and train for which they are issued except when otherwise permitted; clause 209.1 of that

Manual provides, inter alia, that tickets issued to passengers are available only from the date and for the period specified by the Railway

Administration by which they are issued. Note (3) under Clause 209.2 provides that in all cases of advance booking the date of commencement of

journey will be endorsed on each ticket, at the time of issue, in ink, as: ""Journey to commence on....."" To buttress the arguments, the learned standing counsel for Railways has obtained two tickets from the local Railway Station in Ernakulam to demonstrate to us that when he purchased a ticket on 12-8-2012 for a journey to be performed on 15-8-2012 the date of issue of the ticket was shown as 12-8-2012 with the endorsement JCO ON: 15-8-2012"". The argument advanced is that the Railway tickets contain the endorsement ""JCO On"" regarding the date on which the journey could commence.

2. He also made reference to the latest Commercial Circular Nos. 17 of 2009 and 37 of 2011 issued by the Railway Board which show that

unreserved tickets issued through Unreserved Ticket System can be issued only on the same day if the journey involved is less than 200 kms. and

those involving journey of 200 kms. and above, such tickets would be issued upto three days in advance excluding the day of journey.

3. Reverting to the facts of the case in hand, the Tribunal noted that the distance between the Railway Stations Varkala and Chennai is above 800

kms. It noticed that Ext R-1, DRM's report, discloses the admitted situation that the deceased was holding a II class journey ticket, the number

and date of purchase of which are disclosed thereon and are recorded in the DRM's report. Perusing the lower court records, we see that the

inquest report and other materials indicate that some currency and the ticket were available in the pocket of the pants worn by the deceased. The

Tribunal did not accept the Railways' plea that the said ticket was an invalid ticket. For this, the Tribunal held that on the own admission of the

Railways and on the basis of the evidence tendered by the applicant, the deceased has to be held as holding a journey ticket to travel in Train No.

2624, Trivandrum-Chennai Express on 8-7-2010 and there is nothing on record to accept the assertion made by the Railway that the journey

ticket purchased on 7-7-2010 was invalid for making any journey on 8-7-2010, especially when the destination is more than 800 kms. The

Tribunal accordingly held that the Railways failed to prove that the deceased was travelling with an invalid ticket.

4. Having examined the entire lower court records, in the light of the submissions of the learned standing counsel for the Railways, we do not find

any infirmity in the appreciation of evidence by the learned Tribunal. The Railways had admitted in Ext. R-1 DRM's report that the deceased fell down from a running train and died as a result of that. The cause of death is clearly stated in Ext. A-5 post-mortem certificate as referable to the head injury. Ext. A-6 final report submitted by the police also reveals that the deceased, while travelling in Trivandrum-Chennai Express from Varkala, was thrown out of the compartment near Sasthamkotta Railway Station, as a result of which he sustained injuries on his head and died instantaneously. The investigating officer has opined in Ext. A-6 that it is an accidental death. It was in this situation that the Tribunal, in our view, quite rightly held that the deceased met with an untoward incident within the meaning of Section 123(c)(2) of the Railways Act, 1989. It is not in dispute that the incident is an untoward incident. As already noted, the pointed plea is that deceased was not a bona fide passenger inasmuch as the ticket he possessed was one for travel on 7-7-2010 and not on 8-7-2010 when he is seen to have performed the journey. The finding of the Tribunal that the deceased was a bona fide passenger is accordingly impeached in this appeal.

5. Section 124A provides for compensation on account of untoward incident. That provision operates notwithstanding anything contained in any other law. The specific grounds on which compensation becomes not payable under that section are enumerated in clauses (a), (b), (c), (d) and (e) of the proviso. The Explanation to Section 124A defines the term "passenger" for the purpose of that section. It is as follows:

Explanation.--For the purposes of this section, "passenger" includes-

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

(emphasis supplied)

6. The afore-quoted explanation is used as a tool to define the term "passenger" for the purpose of Section 124A. The mechanism used is to provide an inclusive definition. The word "passenger" is defined to include those enumerated in entries (i) and (ii) under that explanation. The enlarged scope of the term "passenger" has been made by the legislature with

the clear intention of excluding the benefit of Section 124A being denied to any person who becomes a victim of an untoward incident. More importantly, the second limb of the Explanation provides that "passenger" includes a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date and becomes a victim of an untoward incident. Even a person holding a valid platform ticket would fall within the definition of "passenger" for the purpose of Section 124A. The provision "on any date" in that part of the Explanation is provided with the clear intention to exclude any nexus being sought between the date of the ticket and the date of journey, to grant compensation for untoward incident. We may envisage that in exceptional cases, if the Railways were to show that a ticket which was valid has turned invalid with passage of a particular time in terms of the relevant laws, that may give some room for consideration as to whether the passenger was a ticketless traveller. In the case in hand, even going by the contentions of the Railways, the deceased purchased the ticket on 7-7-2010 and performed the journey on 8-7-2010. Having regard to the finding rendered above on the applicability of the Explanation to Section 124A, we are of the view that, at any rate, the proximity between the purchase of ticket and the performance of the journey excludes any ground on which the deceased could be excluded from the definition of "passenger" for the purpose of Section 124A. We do not propose to answer the question whether a ticketless passenger would be entitled to the benefit of Section 124A since such issue does not arise in this case. Similarly, the concept of "bona fide passenger" is something which is not reflected in Section 124A. The argument in that regard is also essentially built on the view that bona fides is an ingredient to be looked into. In the case in hand, the plea that the deceased was not a bona fide passenger is raised only in the context of the afore-noted contention that the ticket he possessed was the one purchased on the day previous to the journey and would, therefore, be one intended to be used for the journey on the previous day. Having regard to the afore-noted clear statutory provision as contained in the Explanation to Section 124A, we hold that since the person had purchased a valid ticket for travelling by a train carrying passengers and has become a victim of an untoward incident, compensation is payable u/s 124A of the Act

without reference to the date of purchase of the ticket.

For the aforesaid reasons, this appeal fails. The same is accordingly dismissed in limine.