
(1991) 07 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3693 of 1979

Union of India (UOI)

APPELLANT

Vs

Jhansi Ram and Others

RESPONDENT

Date of Decision : 31-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Compensation Act, 1923 — Section 2

Citation : (1992) ACJ 665 : (1991) 2 AWC 181

Hon'ble Judges : R.K. Gulati, J;A.N. Varma, J

Bench : Division Bench

Advocate : Lal Ji Sinha, for the Appellant; V.N. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This petition is directed against the order of Claims Commissioner, Northern Railway, Allahabad, dated 23rd March, 1979, allowing a claim put forward by one Jhansi Ram, a railway employee and his minor son Dalip Kumar. Under the impugned order a sum of Rs. 34,500/- was awarded to Jhansi Ram and Rs. 25,000/- to Dalip Kumar. The compensation has been granted u/s 82-A of the Indian Railways Act, 1890, which provides for adjudication of claims by passengers for injuries sustained by them or by their dependants, if the passengers die in a railway accident.

2. In the present case, the accident took place while Jhansi Ram, his wife Gyan Kumari, their daughter Geeta and a minor son Raju were travelling by the Deluxe Express (103 Up) on 10.10.1977 from Durgawati to Allahabad. In the accident Gyan Kumari, Geeta and Raju aforesaid all died. Jhansi Ram, however, escaped death but sustained certain injuries. The accident had taken place while the Deluxe Express was nearing Allahabad Railway Station. To be precise, the accident took place at Naini as a consequence of collision with a goods train being Up C.P.C. Special around 00.15 hours.

3. After the aforesaid tragedy, Jhansi Ram lodged a claim before the Ad Hoc Claims Commissioner, praying for compensation under various heads on account of the injuries sustained by him as well as for the death of his wife, Gyan Kumari. Later on, Jhansi Ram made an application on behalf of his minor son Dalip Kumar, as latter's guardian, claiming compensation on account of the death of Gyan Kumari. By the impugned order both the claims have been allowed. A sum of Rs. 50,000/- has been awarded to be shared equally between Jhansi Ram and his son Dalip Kumar. Jhansi Ram has been awarded a further sum of Rs. 9,500/- on account of personal injuries sustained by him in the accident. Aggrieved by the award, the Railways have filed this petition.

4. Against the claim of Jhansi Ram and his son Dalip Kumar, several objections were raised on behalf of the railway administration before the Claims Commissioner. It is, however, not necessary to elaborate here all those objections as in the course of arguments, learned counsel for the petitioner has confined his submissions only to two points.

First, that Gyan Kumari was not a bona fide passenger, and, consequently, no compensation could be awarded on account of her death either to Jhansi Ram or Dalip Kumar. In support of this contention, the learned counsel placed reliance on *Sundari v. Union of India* 1984 ACJ 614 (All)

Second, that neither Jhansi Ram nor Dalip Kumar could legally be regarded as dependants of Gyan Kumari so as to entitle them to compensation u/s 82-A of the Indian Railways Act.

5. We shall deal with the 1st point first. The facts found by the Claims Commissioner are that Jhansi Ram had obtained what is called the Privilege Ticket Order (described as "P.T.O." in short hereinafter) for travelling along with his family, consisting of his wife and the aforesaid two children from Allahabad to Durgawati and back. Under the P.T.O. which is a privilege allowed to the railway employees, the railway employee proposing to travel by the Indian Railways is allowed a concession in the purchase of tickets. On the strength of the P.T.O. obtained by Jhansi Ram, he obtained only one adult ticket for the journey from Allahabad to Durgawati. Likewise, for the journey from Durgawati to Allahabad by the ill-fated train, Jhansi Ram again purchased only one adult ticket. The finding of the Claims Commissioner on this point is that admittedly Jhansi Ram had purchased only one adult ticket for the fateful journey. The Claims Commissioner, however, observes that there is no evidence on record to show that the ticket purchased by Jhansi Ram was for himself and not for Gyan Kumari. It is indisputable that the burden to prove that Gyan Kumari was travelling without ticket, was squarely on the railway administration. It was, therefore, for them to prove affirmatively that Gyan Kumari was travelling without ticket. The Commissioner has considered the state of evidence on record, and in the absence of any positive indication that the ticket related to Jhansi Ram, rightly concluded that the railway administration has failed to establish that Gyan Kumari was travelling without ticket. The submission, therefore, that Gyan

Kumari was not a bona fide passenger has no merit and must be rejected.

6. As there is no evidence on the record to show that the ticket was purchased for Jhansi Ram himself and not for his wife Gyan Kumari, it is not necessary to comment on the other finding of the Commissioner that as Jhansi Ram was travelling on a P.T.O. he was not required to purchase any ticket.

7. That takes us to the second point urged in support of the petition. In order to appreciate the contention, it would be necessary to have a look at the relevant provisions of the statute touching the controversy. Under the explanation to Section 82-C of the Indian Railways Act, the word "dependant" has been defined as having the same meaning as has been assigned to it under clause (d) of Section 2 of the Workmen's Compensation Act, 1923. Section 2 of the Workmen's Compensation Act, 1923 defines the word "dependant" as follows:

(d) "dependant" means any of the following relatives of a deceased workman, namely--

(i) a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death--

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive;

8. A glance at the definition would indicate that in so far as a minor son is concerned, he has to be deemed a dependant of the deceased without being obliged to establish that he was actually dependent for his livelihood on the deceased. It is a special definition of the term "dependant" and the legislative intention appears to be that in the case of a minor legitimate son there ought to be a presumption that he was a dependant of deceased parent. Under Clause 2(1)(d)(i) mere relationship with the deceased brings the relation falling under

that category is sufficient to clothe him with the status of a dependant.

9. Consequently, in so far as Dalip Kumar is concerned, he has to be deemed to be a dependant of Gyan Kumari by reason merely of his relationship with his mother Gyan Kumari. We are fully fortified here by a decision of this court reported in *Union of India v. Vinod Prakash Singh* 1982 ACJ 137 (All) in which a Division Bench of this court had occasion to consider precisely this controversy. There too a controversy had arisen in the context of the Railways Act, whether a minor son claiming compensation on account of death of his mother in an accident in the course of railway journey, was entitled to claim compensation as a dependant without having to establish that he was actually dependent on her. Taking note of the definition of the term "dependant" as provided in Section 2(1)(d)(i), the Bench observed that for the category of persons falling u/s 2(1)(d)(i) of the Workmen's Compensation Act, 1923 mere relationship with the deceased workman, without more, was enough. It was further ruled that the question whether the claimant was dependent on the earnings of the deceased workman arises only in cases covered by clauses (ii) and (iii) of Section 2(1)(d) of the Workmen's Compensation Act. The Bench further observed that Awadhesh Kumar (one of the claimants) being a minor son of the deceased was entitled to receive the compensation and the Ad Hoc Claims Commissioner rightly decided so. That disposes of the controversy with regard to Dalip Kumar. He was, in our opinion, plainly entitled to claim compensation on account of death of his mother Gyan Kumari by reason of the simple fact of his relationship with Gyan Kumari as her minor son.

10. We next turn to the question whether Jhansi Ram could also be regarded as a dependant of Gyan Kumari. In considering this question regard shall have to be had to the definition of the word "dependant" u/s 2(1)(d)(iii). Under this clause a widower is regarded as a dependant, if he was dependent on the earnings of the deceased whether wholly or in part at the time of death of the deceased. It will thus be seen that for the success of his claim as a dependant of Gyan Kumari, it was sufficient for Jhansi Ram to establish that he was dependent at least partially on the earnings of his wife Gyan Kumari. Fortunately, for Jhansi Ram, on this issue there is a clear and categorical finding of the Commissioner in his favour. The Commissioner has on a consideration of the evidence led by the parties concluded that Gyan Kumari was earning a sum of Rs. 100/- and was contributing to the family. The Commissioner has also observed that she used to spend her earnings in meeting the household expenses of Jhansi Ram's family. Further the amount of Rs. 100/- was not an insignificant contribution considering that Jhansi Ram's own carry-home pay-package was only Rs. 298/-per month. There was, thus, ample evidence to sustain the finding of the learned Commissioner that Jhansi Ram was at least partially dependent on the earnings of his wife Gyan Kumari.

11. It must not be forgotten that the question whether the claimant was dependent wholly or in part on the earnings of the deceased, is indisputably a

question of fact and the finding on such an issue cannot be disturbed in these proceedings under Article 226 of the Constitution, unless it is demonstrated to be vitiated by some error of law or jurisdiction, which the learned counsel for the petitioner has failed to establish.

12. In the result, the petition fails and is dismissed with costs.

13. Under an interim order passed by this court on 17.5.1979 the petitioner was directed to deposit a sum of Rs. 25,000/- out of the total amount awarded in favour of respondent Nos. 1 and 2 with the Registrar of the court with the further direction to invest it in some interest-bearing account. The petition having been dismissed, respondent Nos. 1 and 2 are entitled to get the amount of Rs. 25,000/-together with interest earned thereon. The Registrar of the court is, therefore, directed to take prompt steps for ensuring that the amount is paid to respondent Nos. 1 and 2 without delay.