

(1997) 10 RAJ CK 0034
In the Rajasthan High Court

Union of India (UOI)

APPELLANT

Vs

Soram Bai and Others

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Evidence Act, 1872 — Section 114

Railways Act, 1989 — Section 123, 68

Citation : (1998) 1 ACC 529

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—The questions that arise for consideration in this appeal are whether the respondents are dependents of the deceased Lal Singh Nath u/s 123 of the Railways Act, 1989 and whether the deceased was a bona fide passenger ?

2. These questions have emerged in the following circumstances:

(i) The deceased Lal Singh Nath was travelling in the ill-fated train 1593 Dn. Kota-Bhopal passenger which met with an accident at about 21.15 hrs. on September 21, 1993 between Chhabra Gugor and Bhulon Stations in Kota Ruthiyal Singh line non-electrified BG section of Kota Division of Western Railway. The deceased Lal Singh Nath died on the spot as a result of injuries sustained in the accident. The age of deceased Lal Singh Nath, according to the claim application, was 35 years.

(ii) In the written statement the Railway Administration only admitted injuries as a result of accident. It was pleaded that "regarding the alleged nature of injuries and subsequent death the applicants are put to strict proof of the same."

(iii) Learned Railway Claims Tribunal framed as many three issue as under-

(1) Whether the applicants are the dependents u/s 123 of the Railways Act, 1989 and are entitled to file application ?

(2) Whether the deceased was bona fide passenger ?

(3) To what amount of compensation the applicants are entitled to get?

(iv) Claimant-respondents Smt. Soram Bai and others claimed Rs. 2,00,000/- as compensation on account of death of Lal Singh Nath. Smt. Soram Bai is the widow of Lal Singh Nath whereas Thaswar Bai aged 7 years, Vikram aged 4 years, Jeena Bai aged 2 years are the children of the deceased and Smt. Kamla Bai aged 55 years is his mother.

(v) In support of claim application, Smt. Soram Bai filed affidavit whereas no evidence was adduced by the Railway Administration.

(vi) Learned Railway Claims Tribunal vide judgment dated April 5, 1994 allowed the claim application and directed Railway Administration to pay Rs. 2 lacs as compensation to the claimants. Out of the said amount Rs. 1,00,000/- was to be paid to Smt. Soram Bai and Rs. 25,000/- to other claimants.

(vii) The appellant Union of India assailed the said judgment of the Railway Claims Tribunal in this appeal.

3. I have given my anxious consideration to the rival contentions and carefully perused the impugned judgment.

4. Smt. Soram Bai in her affidavit, stated that the deceased Lal Singh Nath was travelling from Kota to Vijaypur by the ill-fated train. The dead-body of deceased Lal Singh Nath was handed over after five days. Verbal inquiry was also made by the learned Tribunal from Smt. Soram Bai. It was revealed that deceased Lal Singh Nath was coming from Kota to Vijaypur and the ticket purchased by him might have been lost/destroyed in the accident. Learned Tribunal presumed that the deceased Lal Singh Nath had a valid ticket for the journey and he was a bona fide passenger. The ticket, which he had purchased might have been lost/destroyed in the melee.

5. Mr. S.C. Purohit, learned Counsel appearing for the appellant canvassed that finding of the learned Tribunal is based on surmises and conjectures. Learned Tribunal has wrongly drawn the presumption that deceased was a bona fide passenger. Learned Counsel also contended that proper opportunity was not afforded to the appellant to adduce the evidence. I am unable to persuade myself to agree with the contentions raised by the learned Counsel. In the written statement there is no specific pleading by the Railway Administration to the effect that no ticket was issued from Kota to Vijaypur. Thus in absence of specific denial the pleadings of the claim petition shall be taken to be admitted in view of Order 8, Rule 5 of the Code of Civil Procedure.

6. In Raj Kumari and Another Vs. Union of India (UOI), the Division Bench of Madhya Pradesh High Court propounded thus-

When a person is found dead as a result of accident in a Railway carriage, in which he was travelling, a presumption may be drawn u/s 114 of the Evidence Act keeping in view of the prohibition u/s 68 of the Railways Act against boarding

a train without ticket that the deceased was a bona fide passenger. Since ticketless travel is an illegal act and exposes such traveller to penal action, the presumption is of innocence in favour of such one of the travellers or passengers in a train. It is for the Railway Administration to prove contrary and the burden in such circumstances that the deceased was a ticketless traveller or was not a bona fide passenger, should be on the Railway Administration which has special means of knowledge as to whether any ticket was issued to that deceased or at the end of journey he was checked and detected by staff of the Railway as an unauthorised person without ticket, pass or permission.

7. In the case on hand the Railway Administration was afforded opportunity to adduce evidence but no evidence was produced showing that the deceased Lal Singh Nath was travelling without ticket therefore the learned Tribunal rightly drawn presumption u/s 114 of the Evidence Act and observed that deceased Lal Singh Nath was bona fide passenger who lost his life in the Railway accident. It is likely that deceased Lal Singh Nath held a valid ticket, pass or permission but the same is lost in the accident with his death and loss of his belongings, if any.

8. In view of the discussions made herein above, I see no illegality in the impugned judgment. The learned Tribunal rightly held that the claimants are dependents of the deceased Lal Singh Nath.

9. In the result, the appeal fails and is hereby dismissed with costs. The appellant deposited Rs. 2,28,000/- through five cheques in this Court. The claimants respondents are entitled to withdraw the said cheques. The interim order passed on June 21, 1995 stands vacated.