(2002) 08 AP CK 0027

Andhra Pradesh High Court

Case No: None

Dasari Laxmi		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Aug. 16, 2002

Acts Referred:

- Evidence Act, 1872 - Section 101, 102, 114
- Railways Act, 1989 - Section 123, 124, 124A

Citation: (2004) 2 ACC 125

Hon'ble Judges: S. Ananda Reddy, J

Bench: Single Bench

Judgement

S. Ananda Reddy, J.
This is an appeal filed by the applicant against the award passed by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad in O.A.A. No. 8 of 1997, dated 16.10.1997 dismissing the claim.

2. As per the averments of the application, on 9.10.1996 while the deceased Dasari Nageswara Rao was trying to board Secunderabad-Palasa Visakha Express'' at Yelamanchili Railway Station, he slipped and fell down from the train accidentally and sustained injuries. Subsequently, he died in the Government Hospital, Vishakhapatnam. The applicant being the wife, who is a dependent of the deceased, made a claim for compensation of Rs. 2,00,000/- in respect of the death of her husband.

3. No written statement was filed by the respondent Railway authorities. Thereafter, Tribunal framed the issue whether the deceased was a bona fide passenger or not and thereafter recorded the evidence of both sides and decided the issue holding that the deceased was not a bona fide passenger as there is no evidence showing that he had purchased the ticket and, therefore, dismissed the application of the claimant. Aggrieved by that, the applicant has come up in the present appeal.

4. The learned Counsel for the appellant contended that the Tribunal erred jn rejecting the claim of applicant. It is contended that the deceased was carrying on business in the sale of cigars at Visakhapatnam. On the date of accident, he along with two others, who were carrying similar business, was proceeding to Vishakhapatnam by "Visakha Express" and the evidence of the co-passenger (co-seller) clearly shows that the deceased purchased the ticket by borrowing Rs. 20/- from the co-seller, as at the booking-counter, it was informed that there is no change for Rs. 100/- note which was offered for the purchase of the ticket and hence the deceased had borrowed Rs. 20/- from RW. 2 and purchased the ticket, which was clearly deposed by RVV. 2. In the light of the said evidence and in the absence of any other contra evidence, the Tribunal was not justified in rejecting the claim of the appellant/claimant. Learned Counsel also contended that the provisions which are intended to award compensation to the dependents of the deceased m an accident where it causes death of a passenger, the burden cannot be imposed on the dependents to prove that the deceased passenger was a bona fide passenger. The learned Counsel also contended that the burden should be on the Railways to prove that the deceased was not a bona fide passenger in order to deny its liability to pay the compensation as provided under the provisions of the Railways Act. Learned Counsel also relied upon a decision of the Madhya Pradesh High Court in the case of Raj Kumari and Another Vs. Union of India (UOI), , where it was held that the burden to prove that the deceased was not a bona fide passenger is on the Railways. The learned Counsel also relied upon a decision of the Rajasthan High Court in the case of Union of India v. Soram Bai 1998 (2) AJR 254, where a similar view was taken by Gullipalli Lakshmikanthamma Vs. General Manager, South Central Railway, The learned Counsel, therefore, contended that the view taken by the Tribunal is contrary to the above decisions, apart from the evidence on record and, therefore, sought for setting aside the impugned order.

5. The learned Standing Counsel for the respondent Railways on the other hand, supported the order of the Tribunal. The learned Counsel contended that it is for the claimant to prove that the deceased was a bona fide passenger in which case alone the claimant is entitled for compensation. The learned Counsel contended that there is a dispute both as to the accident as well as to the fact that the deceased was travelling with a valid ticket. Basing on the evidence adduced by both sides the Tribunal came to the conclusion that the deceased was not a bona fide passenger and, therefore, the claim was rightly rejected. The learned Counsel also relied upon two decisions of the Allahabad High Court in the case of Sundari v. Union of India 1984 ACJ 614 and. Sudha Srivastava v. Claims Commissioner, Northern Railway 1985 ACJ 404 (Allahabad). The learned Counsel, therefore, sought for dismissal of the appeal.

6. Heard both sides and considered the material on record.

7. The dispute in this appeal is whether the claimant-appellant is entitled for any compensation under the provisions of the Railways Act, 1989.

8. Though it was disputed even as to the factum of accident, but the Tribunal on consideration of the material on record gave a finding that there is no controversy as to the untoward incident (accident) that had occurred on 9.10.1996 in which the deceased had received injuries and subsequently died in the hospital on 10.10.1996. Therefore, it is to be considered whether the deceased was a passenger as referred to in Clause (2) to the Explanation u/s 124-A, which reads as under:

Compensation on account of untoward incidents.-

(i) xxx xxx xxx

(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.

9. In order to decide the above, it is to be considered on whom the burden lies. Is it on the claimant or on the respondent authorities, who wants to deny the liability? In order to prove that the burden lies on the Railways, the appellant relied upon the judgment of the Madhya Pradesh High Court in the case of Raj Kuninri v. Union of India (supra). In that case, a Division Bench of the Madhya Pradesh High Court had an occasion to consider similar issue with reference to a claim u/s 82-A of the old Act, which corresponds to Section 124. Of course Section 124-A was inserted for the first time in the year 1994 under which the compensation payable on account of untoward incident was specifically incorporated. Similarly, u/s 123, the term ''untoward incident'' was also defined so as to include even the accidental falling of any passenger under a train carrying passengers. The Division Bench after considering the rival contentions and also referring to some of the relevant provisions of the Railways Act, which specifically prohibits travelling without pass or ticket, which would in fact result in imposition of punishment of imprisonment or fine and concluded that the burden is on the Railways to prove that the deceased was not a bona fide passenger. The relevant portion of the judgment reads as under:

The main question that arises in this case is on whom the onus of proof lies in such claim cases and whether any presumption under the Evidence Act can be raised. Normally, under Sections 101 and 102 of the Evidence Act, the burden to prove such facts, on which the legal right or liability depends, is on such person who asserts existence of these facts. But the question before us is whether the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, can be placed on his dependents. Obviously, such burden of proof is impossible to be discharged by the dependents, who can have no means of knowledge, whether the deceased, before boarding the train, had purchased a valid ticket, pass or permission from the railway authorities. It is likely that such a

deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings, if any.

Thereafter, the Court referred to the provisions of Section 114 of the Evidence Act and held that when there is a prohibition to board the train and travel without a ticket or pass, it should be presumed that the passengers travelling in the train are the passengers with ticket. Holding so, the appeal was allowed granting compensation to which the claimants are entitled.

10. Similar view was taken by the Rajasthan High Court in the case of Soram Bai (supra). A learned Single Judge of this Court had also an occasion to consider a similar issue in case of Gullipalli Likshmikanthamma (supra), where the claimant''s appeal was allowed holding as under:

After considering the same, I am of the opinion, that an inference can be drawn to the effect that the deceased is a bona fide passenger having regard to the realities and realistic and pragmatic approach of the question involved. It cannot invariably be conceived or comprehended that, always, ticket should be traced. One has to imagine the circumstances, that will prevail, at the relevant time and whether keeping of the ticket should be given that much of importance at the crucial time, when the deceased was suffering from fatal injuries died, the ticket could have been missing. So, from the material on record, it must be found that the deceased is a bona fide passenger.

11. On the other hand, learned Counsel for the respondent relied upon a decision of the Allahabad High Court in the case of Sundari v. Union of India (supra), where a Full Bench of the Allahabad High Court had considered the expression ''passenger'' and held that it does not include trespasser or person travelling without ticket, pass or authority and, therefore, the compensation is not payable for the death of such trespasser in a train accident. The said decision does not deal with the burden on whom it lies to prove whether the deceased was a bona fide passenger or not. Similarly, in the case of Sudha v. Claims Commissioner, Northern Railway (supra), a Division Bench of the Allahabad High Court had considered the scope of Sections 82-A and 82-F of the Railways Act. Though in that case it was held that the burden of proof lies on the claimant, in fact the dispute in that case was whether the deceased died in consequence of the train accident and the Court gave a finding that there was not reliable evidence to show that the deceased purchased a ticket and boarded the train. In that case the finding was that there is no evidence as to the travelling of the deceased in the train, which met with the accident. Therefore, it could not be an authority to support the contention of the respondent authorities that the burden lies on the claimant to prove that the deceased was a passenger in terms of Explanation to Section 124-A of the Act.

12. In the light of the above decisions, if we examine the evidence, which was considered by the Tribunal for recording a finding, on behalf of the claimant, the

claimant herself was examined as P.W. 1 and got examined P.W. 2, who is said to be an eye-witness to the accident as well as to the purchase of the; ticket. In fact the evidence of P.W. 1 cannot be of much relevance as to the purchase of ticket as she was not present either at the time of the purchase of ticket or at the time of the accident. P.W. 1 categorically stated that the deceased tendered Rs. 100/- note at the railway booking counter and as the booking-clerk informed the deceased that he does not have the change; the deceased borrowed Rs. 20/- from P.W. 2 and purchased the ticket. In fact, hi the cross-examination of the said witness/not even a suggestion was made disputing his version that he had advanced Rs. 20/- to the deceased for purchasing the ticket and the purchase of ticket by the deceased. On behalf of the railway authorities, no counter or written statement was filed but examined R.W. 1 who is a Guard of the said train, Visakha Express, under which the deceased came under and was ran over. His evidence is that there was no accident at all. He must have been examined to prove that there was no such accident at all. But as the Tribunal gave a categorical finding as to the factum of accident, his evidence is not at all relevant for the present appeal. Coming to the evidence of R.W 2, who was the Assistant Station Master at the relevant point of time, his evidence shows that he was informed by some people that a man had fallen down accidentally from the train and was lying injured on the platform. According to this witness, he went to the spot and came back to his office to make arrangement for sending the injured to the Government Hospital. His further version was a part of the crowd told him that they had arranged a rickshaw and would undertake to carry the injured to the hospital and they only wanted a memo from R.W. 2 addressing the hospital authorities for forwarding the injured. According to this witness, the crowd told him that injured was having a season ticket and when he wanted to see the said season ticket, the crowd had pressurised him to issue memo informing that the injured was having professed bleeding. Therefore, this witness has issued a memo incorporating the said fact. In the cross-examination, however, his version was recorded as "He denies the suggestion that he mentioned about the season ticket on the ground of pressuring him to do so". He has even deposed in the cross-examination that he could not recollect any particular face in the crowd and cannot identify any one. The witness has also admitted that there was no rowdy behaviour of the mob immediately after the accident.

13. The Tribunal based on the above version of R.W. 2, rejected the claim of the claimant on the ground that the claimant failed to prove that the deceased was a passenger as defined in the Act. The conclusion arrived at by the Tribunal is not proper and just even going by the evidence. P.W. 2 categorically stated that he advanced Rs. 20/- to the deceased as he could not purchase ticket with his own money as he was having Rs. 100/- note for which there was no change at the booking counter. When his version was not even doubted by giving any suggestions in the cross-examination, there is absolutely no justification in not accepting his version. In fact, the evidence of R.W. 2 is in a way of shaky. He was not very clear,

who has pressurised him to note that the deceased was having a season ticket. According to his own version, when he was informed by the mob, he went to the spot and came to his office for preparing a memo. Therefore, under the above circumstances, the Tribunal is not justified in giving much importance to the evidence of R.W. 2 rather than the evidence of RW. 2. The Tribunal showed the reason for not accepting the evidence of P.W. 2 that though he was along with the deceased when he was lying injured, he did not inform R.W. 2 that he had purchased a ticket and he was not having a season ticket. R.W. 2 did not state that P.W. 2 was aware of the preparation of the memo and whether he was present in the crowd, who pressurised him to issue the memo stating that the deceased was having the season ticket. In the light of the above evidence as well as in the light of the decisions cited earlier, the conclusion arrived at by the Tribunal is not just and proper and accordingly the said findings are liable to be set aside. Therefore, the impugned order is set aside and the claimant is, therefore, entitled for compensation as claimed in accordance with Part-I of Schedule to the Railway Accidents (Compensation) Rules, 1990.

14. In the result, the appeal is allowed. No. costs.