

(2009) 09 CAL CK 0053

Calcutta High Court

Case No: F.M.A. No. 1525 of 2003

Shakuntala Show and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Sept. 23, 2009**Acts Referred:**

- Railway Claims Tribunal Act, 1987 - Section 16, 23
- Railways Act, 1989 - Section 124A, 137, 138, 139, 2(28)

Citation: (2011) ACJ 308 : (2010) 1 CALLT 145 : (2011) 7 RCR(Civil) 2238**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Kishore Kumar Prasad, J**Bench:** Division Bench**Advocate:** Krishanu Banik, for the Appellant; Uttam Kumar Majumdar and S. Banerjee, for the Respondent

Judgement

Kishore Kumar Prasad, J.

This appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is at the instance of the claimants in a proceeding u/s 16 of the Railway Claims Tribunal Act, 1987 and is directed against the judgment and order dated 17.8.1999 passed by Railway Claims Tribunal, Calcutta Bench in Claim Application No. A/1585 of 1998, thereby dismissing the said application on the ground that it has not been established that the deceased Ram Bilas Show was a bona fide passenger within the meaning of Section 124A of the Railways Act, 1989 as amended in 1994 and as such the claimants as his Dependents were not entitled to any compensation.

2. Being dissatisfied, the claimants have come up with the present appeal.

3. The claimants before the Tribunal contended that the deceased was working as a cabin man under the railway administration and his work spot was at Balgona. After his duty was over on 1.4.1998, he left Balgona Railway Station for returning to his railway quarters at Saktigarh. At Burdwan Railway Station, he boarded Burdwan-Howrah Local (Chord) No. C/282 Dn. When the said train reached

Saktigarh Railway Station, he accidentally fell down on Platform No. 3 (Down Platform) due to sudden jerk and sustained multiple injuries. He was taken to Burdwan Medical College & Hospital where he succumbed to the injuries on the following day that is on 2.4.1998. According to the claimants, the deceased was travelling with railway pass No. 200108 when the untoward incident took place on 1.4.1998. Claimants claimed statutory compensation of Rs. 4,00,000 on the ground that the death of the deceased was as a result of accidental fall from a running train.

4. The learned Tribunal found that the deceased Ram Bilas Show did in fact travel in the ill-fated train and lost his life in the accident. But on the question whether he was a bona fide passenger as contemplated in Section 124-A of the Railways Act, the learned Tribunal, by reason of the impugned judgment, answered the said issue in negative holding:

The case of the applicant is that her husband, Ram Bilas Show was returning from Balgona Station after performing his duty as cabin man there and from Balgona Railway Station he boarded in Burdwan-Howrah Local Train No. C/282 Dn. Her further case is that, her husband was travelling with a valid railway pass No. 200108 when the incident took place.

We find from the railway pass No. 200108 issued by Divl. Railway Manager, Howrah on 25.2.1998 that it was issued for Ram Bilas Show with his wife and one son aged 20 years for travelling from Howrah/Sealdah to Delhi/New Delhi with break journey at Burdwan and Mughalsarai on both ways. The case of the applicant is that this privilege pass was used by her husband Ram Bilas Show while he was returning from his place of duty at Balgona Station to his railway quarters at Saktigarh Station on 1.4.1998. The moot point in this regard is whether it was at all possible for a railway employee to use a privilege pass meant for journey from Howrah/Sealdah to Delhi/New Delhi and back with his wife and son, for the purpose of returning to his railway quarters at Saktigarh from Burdwan Station on 1.4.1998. The usual railway fare from Burdwan to Saktigarh is hardly Rs. 3 and no man with ordinary prudence could believe that for such a short distance one railway employee will utilize his privilege pass which was issued to travel for such a long distance, i.e., Howrah/Sealdah to Delhi/New Delhi and back, with the members of his family. It is the case of the applicant that Ram Bilas Show was returning from his place of duty at Balgona Station on the date of incident. Balgona Station is located on the narrow gauge line on Burdwan-Katwa section. The privilege pass No. 200108 dated 25.2.1998 would not be used for a journey from Balgona to Burdwan Station and the deceased must have travelled the said distance from Balgona Station to Burdwan Station either with a purchased railway ticket or without any valid railway ticket. If really he had purchased a railway ticket for his journey from Balgona to Burdwan Station, it was quite natural that he would have spent Rs. 3 for purchasing the railway ticket from Balgona Station to Saktigarh Station on that date. From the alleged endorsement on the reverse side of the privilege pass we find a signature by

one R.B. Show for both outward and return journey on 1.4.1998. The signatures are in English and in a close look we have no hesitation that it was signed by someone else other than the deceased Ram Bilas Show. If for the outward journey on 1.4.1998 the privilege pass was used then the deceased must have boarded some local train from Saktigarh for reaching Burdwan Station and then proceeded for duty. At Balgona, no break journey was permitted in the privilege pass. At Saktigarh he could not use that privilege pass for his outward journey from Saktigarh Station to Burdwan on 1.4.1998. Under Railway Rules, when a break journey is performed, there must be endorsement on the railway pass by the Asstt. Stationmaster concerned of the station. But, curiously enough, there is no endorsement by the ASM of Burdwan Station that Ram Bilas Show made a break journey at Burdwan Station on 1.4.1998 during his outward journey. The endorsement on the return journey is usually done either at the time of commencement of the journey or during the time of journey or at best on completion of journey. In the local electric train it hardly takes 5/6 minutes to cover the journey from Burdwan Station to Saktigarh Station. It cannot be believed that the alleged endorsement in respect of return journey could be made by the deceased within such a very short time. After the alleged incident at Saktigarh Railway Station, the deceased did not find any time to make the endorsement on the railway pass. There is thus a doubt that the alleged endorsement on the reverse side of the privilege pass was done as an afterthought by someone else in order to prove that the deceased, Ram Bilas Show was travelling with a valid railway pass. We have no hesitation to hold that this is nothing but concocted story put up only to make it appear that Ram Bilas Show was a bona fide railway passenger when the alleged occurrence took place. We are of the opinion that deceased, Ram Bilas Show had no valid railway ticket when the alleged occurrence took place at Saktigarh Station on 1.4.1998. The claim of the applicant is, therefore, liable to be rejected on this ground alone.

5. Learned Counsel appearing on behalf of the Appellants contended that the learned Tribunal committed a serious error in holding that though the deceased had travelled in the train with a pass, the pass which was used cannot be said to be a proper pass and, therefore, he should be treated as a person who travelled without proper authority and, therefore, a trespasser.

6. Learned Counsel appearing on behalf of the Respondent Union of India, on the other hand, supported the judgment of the learned Tribunal.

7. After hearing the learned Counsel appearing for the parties and after going through the materials on record, we are of the opinion that the learned Tribunal in deciding the issue has considered the matter at some details and to assign reasons in support thereof. It is not necessary for us to consider that aspect of the matter again as we find that the factual position was kept in view and had been properly analysed by the learned Tribunal.

8. Even before us it is not disputed that the deceased was a servant of the Railways and the Railways had issued railway pass No. 200108 on 25.2.1998 for the deceased with his wife and one son aged 20 years for travelling from Howrah/Sealdah to Delhi/New Delhi with break journey at Burdwan and Mughalsarai on both ways. "Pass" has been defined in Section 2(28) of the Railways Act, 1989 to mean an authority given by a railway administration or by any officer appointed by a railway administration in this behalf and authorising the person to whom it is given to travel as a passenger on a railway gratuitously.

9. In this case the pass issued by the Railways and used by the deceased was not a "duty pass". "Duty pass" is issued by the railway to enable its employees to travel in the train while they are on duty without payment of the usual fare. A "duty pass" is granted under the free pass rules subject to the regulations of the Railways.

10. Section 55 of Railways Act, 1989 prohibits any person from entering or remaining 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 and u/s 54 every passenger by railway shall present his pass or ticket to the railway servant for examination when required. Section 137 makes it an offence punishable with a term of imprisonment or fine or both, if a person enters or remains in any carriage on a railway in contravention of Section 55 or misuses or attempts to misuse a ticket or pass which has already been used. Section 138 enables the Railways to levy an extra charge in addition to the ordinary single fare for the distance travelled if a person fails or refuses to present for examination or to deliver up or requisition his pass or ticket as per Section 54. Section 139 gives power to Railways to remove a person from a railway carriage if he travels or attempts to travel in a carriage without having a proper pass or ticket with him. The above provisions suggest that to entitle a person to enter into and travel in a train he must have either a proper pass or a ticket issued by the Railways.

11. The rules dealing with the issue of passes are contained in the "pass rules and travelling concessions" of the Railways wherefrom it is clear that the duty pass can be used only for journeys on duty and that a railway servant is not entitled to travel with the duty pass while he is not on duty. There is also rule relating to the issue of residential card passes. Free residential card passes may be granted to the railway servants who are employed in the areas specified in the rule and from rule it is also evident that, for a journey to a station of residence only a railway pass can be used and not a duty pass. The rule also limits the distance of 15 miles in respect of which a residential pass could be granted.

12. In the instant case, there is no dispute that neither any duty pass nor any residential pass was issued to the deceased.

13. Learned Counsel for the Appellants contended that once the court finds that the pass used by the deceased had been properly issued by the Railways, it must be

held that the pass used by the deceased is a proper pass without going into the question whether the pass has been properly used. We are not in a position to agree with the contention of the learned Counsel. When the statute requires that a person must possess a proper pass or ticket before he attempts to travel for the purpose of travelling in a railway carriage, it has to be taken that the pass or ticket should be such as to authorise that particular person using it. In the present case, the deceased used the privilege pass in question and as such he cannot be described as passenger in terms of the explanation clause as mentioned in Section 124-A of the Railways Act, 1989 which reads thus:

124-A. Compensation on account of untoward incident.

x

x

x

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.

14. Hence when the deceased used the said privilege pass in an unauthorised manner it is an improper use of the pass in question.

15. In our view the words "proper pass" used in Section 55 of the Railways Act, 1989 will also connote the proper use of a pass. Though the pass is one properly issued, its user by adopting an unauthorised manner for travelling in a railway carriage would amount to the person travelling without a proper pass.

16. We, therefore, reject the contention of the learned Counsel appearing on behalf of the Appellants that by such improper use of the privilege pass in question, he might have exposed himself to certain departmental proceedings and that from the mere fact that the pass has been improperly used, the deceased cannot be treated as not a bona fide passenger in the ill-fated train.

17. We are, therefore, in entire agreement with the learned Tribunal that the use of the pass in question for a journey to residential quarters by the deceased is not authorised and as such, he cannot be treated as a passenger in the ill-fated train.

18. The finding of the learned Tribunal is correct and we do not find any reason to interfere with the impugned judgment and order passed by the learned Tribunal in dismissing the claim application.

19. For the reasons mentioned above, the appeal is devoid of any merits and stands dismissed and the order of dismissal of the claim application passed by the learned Tribunal vide impugned judgment is affirmed.

20. In the facts and circumstances of the case, there will however, be no order as to costs.

21. Before closing, we are, however, bound to observe that this is a fit case which calls for clemency and sympathetic consideration by railway administration.

22. The deceased was admittedly a railway employee and he travelled in the ill-fated train perhaps with the bona fide impression that he was entitled to use the pass in question for going to his place of residence, in view of the existing practice of other employees using such type of pass for going to their residences.

23. The claimants are the widow and son of the deceased and they were being maintained by the deceased during his lifetime. We hope that the railway administration will take a reasonable and generous view of the matter and see its way to pay some reasonable amount to the claimants on humanitarian grounds if they have not already initiated another action in this regard.

24. The matter should therefore be placed before the Railway Board immediately so that appropriate sympathetic decision can be taken in this regard at an early date, preferably within three months from the date of communication of this order as a special case and without creating any precedence.

25. Lower court records with a copy of this judgment to go down forthwith to the court of learned Railway Claims Tribunal, Calcutta Bench for information and necessary action.

Urgent xerox certified copy of this judgment, if applied for, be delivered to the learned Counsel appearing for the parties upon compliance of all formalities.

Pranab Kumar Chattopadhyay, J.-

26. I agree.