

# RAJASTHAN HIGH COURT

Union of India

Vs.

Mr. Michael M.

S.B. Civil Misc. Appeal No. 3576 of 2005

(R.S. Chauhan, J.)

15.11.2006

## JUDGMENT

### **R.S. Chauhan, J.**

1. The appellant, Union of India, has challenged the order dated 6.9.2005 passed by the Railway Claims Tribunal, *Jaipur Bench, Jaipur* (henceforth to be referred to as 'the Tribunal', for short) whereby the learned Tribunal has awarded a compensation of Rs. Four Lacs to the respondent-applicants.

2. Briefly, the facts of the case are that on 13.4.2001 Michael, son of the claimants, was travelling from Sawai Madhopur to Gangapur City by "Awadh Express". He was travelling by second class for which he had a valid ticket. However, as the train was pulling out of Sawai Madhopur Railway Station, accidentally Michael fell from the running train. Subsequently, he died. Since the claimants lost their son, they filed a claim petition for Rs. Eight Lacs before the learned Tribunal. The appellant submitted their reply and claimed that Michael was not travelling by Awadh Express, and there was no untoward incident and lastly, he was not a bona fide passenger. On the basis of the pleadings of both the parties, the learned Tribunal framed five issues. In order to support their claim, the claimants submitted the affidavit of the claimant No.1 and another of Joni Stafen Najrath. The appellant did not lead any evidence even after denying all the averments of the claim petition. After hearing both the parties and after considering the oral and documentary evidence, the learned Tribunal granted the compensation as aforementioned. Hence, this appeal before this Court.

3. Mr. A.K. Bhargava, the learned counsel for the appellant, has vehemently argued that the burden of proof that the deceased was a bona fide passenger lies on the

claimants. However, they have failed to discharge the same. He further contended that no valid ticket was discovered on the body of the deceased or in his luggage. Therefore, the appellant was justified in claiming that he was not a bona fide passenger. Since he was not a bona fide passenger, the claimants were not entitled to payment of any compensation. He further claimed that there was no untoward incident on the alleged date.

4. We have heard the learned counsel for the appellant and have perused the impugned order.

5. The legal issue, which has arisen before this Court is on whom does the burden of proof lie to prove that the deceased was or was not a bona fide passenger-does it lie on the claimants, or on the Railway Administration? In order to answer these issues, it is imperative that a holistic reading of the Act is undertaken. Section 2 (29) of the Act defines the word "passenger" as meaning "a person travelling with a valid pass or ticket". Section 54 of the Act imposes a duty on a passenger to present his pass or ticket to such railway servant for examination during the journey or at the end of the journey or surrender such ticket at the end of the journey, or if such ticket is issued for a specific period, on the expiry of such period. Furthermore, Section 55 of the Act prohibits every 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. In case a person is found to be ticketless, Section 137 of the Act empowers the courts to imprison such person for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. The proviso thereto restricts the power of the court in imposing the fine. The fine cannot be less than Rs.500/-. Thus, a minimum punishment has been prescribed by the said provision. Section 138 of the Act permits the railways to levy excess charge and fare on those passengers, who travel without ticket. Section 139 of the Act empowers the railways to remove the person in case, the person is found to be travelling ticketless. A bare perusal of all these provisions clearly reveals that a criminal liability is created against a ticketless passenger.

6. Moreover, the explanation appended to Section 124-A further defines the word "passenger" as including a railway servant on duty and a person who has purchased a ticket for travelling by a train carrying passenger, on any date or a valid platform ticket and becomes victim of an untoward incident. The expression "untoward

incident" has been defined by Section 123(c), as under:-

- (1) (i) the commission of a terrorist act within the meaning of sub-section(1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
  - (ii) the making of a violent attack or the commission of robbery or dacoity; or
  - (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
- (2) the accidental falling of any passenger from a train carrying passengers.

7. Section 124A of the Act imposes a liability on the Railways in case of "untoward incident" as under:-

124A. Compensation on account of untoward incident - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) Self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation - For the purpose 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.

Thus, in case a person meets with an untoward incident, the railway is liable to compensate the claimant whether or not there has been wrongful act, neglect or default on the part of the Railway Administration.

8. The first and foremost cardinal principle of Common Law is that "every man is innocent, till proven guilty". The burden of proving a person guilty lies on the State or on instrumentality of the State. Since the Railway Administration is an instrumentality of the State, obviously the burden of proving that the passenger was travelling ticketless and, hence, was not a bona fide passenger lies on the Railway Administration.

9. Of course, Section 101 of the Evidence Act places the burden of proof on the person, who desires any court to give judgment as to any legal right or liability dependent on the existence of the facts, which he asserts. But, in the case of the railway accident where a passenger has died, the claimants would find it extreme difficulty, if not impossible, to prove certain facts, which are beyond their reach and control. Since the claimants may not know whether the deceased had purchased a valid ticket or not, they would not be in a position to prove the fact that the deceased had purchased a valid ticket. However, since the railway appoints ticket collector on its behalf to check the valid ticket of the passengers, the railway has a mechanism for finding out and discovering whether the deceased was a bona fide passenger or not. Since the passenger is presumed to be innocent, a legal presumption can be drawn that he had followed the law and that he had, indeed, purchased a valid ticket prior to boarding the train. Considering the fact that there is an equal presumption in favour of the railway that the railway officers would have discharged his duty of checking the ticket, in a bona fide manner, it can be presumed that the ticket collector would have examined whether the deceased possesses a valid ticket or not. Therefore, the railway has a means through which they can easily prove that the deceased was not a bona fide passenger. Hence, the burden of proof lies on the Railway Administration to lead evidence and to prove that the deceased was not a bona fide passenger.

10. There is yet another aspect of the matter, prior to travelling a passenger neither records, nor leaves any information with the family members about the valid ticket

bought by him. During the course of travelling and specially after he meets with an accident, the body of the deceased is transported and is transferred on various occasions. During the period of alleged accident and the discovery of the body, many things may transpire and the ticket may be lost but unknown to others. Therefore, in case, the ticket is lost, it would be almost impossible for the claimants, who are the member of the bereaved family to establish that the deceased was travelling with a valid ticket. Considering the fact that Section 124 and Section 124A of the Act are social beneficial piece of legislation, by placing the burden of proof on the claimants the benefit of these two beneficiary provisions would be denied to the claimants. An interpretation of the law, which dilutes the very purpose of a provision should be shunned. Therefore, examined from any angle, it is clear that the burden of proving the fact that the deceased was a bona fide passenger or not lies on the Railway Administration and not on the claimants.

11. In the case of *Raj Kumari v. Union of India*,<sup>1</sup> their Lordships of the Madhya Pradesh High Court were seized of the same issue as in this case. Although the said case arose under the Railway Act, 1890 but Sections 68, 130, 122 of the Act of 1890 are pari materia with the provisions of the Railway Act, 1989. In that case, their Lordships categorically held that the burden of proof lies on the Railway Administration to establish that the passenger was not a bona fide passenger. Moreover, the Division Bench of this Court, in the case of *Smt. Bhagwani Giri v. Union of India*,<sup>2</sup> has relied upon the judgment in *Raj Kumari* (supra) and has categorically held that it is for the railway to establish that a passenger was not a bona fide passenger. Considering the fact that a Division Bench of this Court has answered the issue before us, any contrary view taken by another High Court automatically becomes irrelevant. After all, under judicial discipline, the Single Bench is bound by the decision of the Division Bench of this Court. Therefore, this Court has no hesitation in holding that the burden of proof to establish that the deceased was not a bona fide passenger lies on the Railway Administration.

12. While examining the correctness of an order passed by the learned Tribunal, one has to remember that the law prescribes a summary proceeding before the learned tribunal. Moreover, one cannot forget the fact that Section 123 and 123(a) and 123(4) of the Act are beneficiary piece of legislation, which must be applied as liberally as possible in order to ameliorate the financial condition of the claimants. Therefore, all the rigours of the Evidence Act and of Civil Procedure Code cannot be applied to a

proceeding pending before the learned Tribunal. Moreover, the hyper-technicalities of the law cannot obstruct the course of justice. In the present case, the aged parents have lost their son, who would have been their source of support, both emotional and physical, during their old age. Considering the emotional, psychological, physical, and economic vacuum left in their life by sudden demise of their son, a compensation of Rs. Four Lacs is most reasonable. Of course, a monetary compensation cannot replace the life of young man. But it is an effort by the State to lessen the crisis which has entered the claimants' home.

13. In the result, there is no merit in this case. It is, hereby, dismissed. There shall be no order as to costs.

Appeal dismissed.

Cases Referred.

1. (1993 ACJ 846)
2. (2004(4) WLC 573)