
(2011) 11 MP CK 0020
In the Madhya Pradesh High Court
Case No : Writ Petition No. 14740 of 2008

Ashok Kumar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 173(1)

Citation : (2011) ILR (MP) 3084 : (2012) 1 MPHT 138 : (2011) 4 MPJR 150

Hon'ble Judges : Sushil Harkauli, Acting C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—The Order of the Court was delivered by :-In this writ petition, the petitioner who claims himself to be a social worker and a businessman, impugns the validity of provisions of the Court Fee (M.P. Amendment) Act, 2008 in so far as it substitutes Article 11 -a(i) in the second schedule appended to the Court Fees Act, 1870. This case has been heard along with a bunch of other cases involving the same issue. Thus this decision will govern all these cases. The Other cases referred above are Writ Petitions No. 1796 of 2007, 3437 of 2007, 3804 of 2007, 3872 of 2007, 8611 of 2008 and 14738 of 2008.

2. Under Article 11 -a(i) of the Court Fees Act, as amended by M.P. Act No.6 of 2008, in an appeal filed against an award passed by the Motor Accident Claims Tribunal (for short MACT), the claimant is required to pay ad valorem Court Fee at the prescribed rate, which at present is 10%, on the difference between the amount of compensation awarded by MACT and the amount claimed in the appeal. The aforesaid amendment has come into force w.e.f. 2.4.2008. The relevant extract of the Court Fee (M.P. Amendment) Act, 2008 (hereinafter referred to as the "Act, 2008") reads as under:

(it) In article 11, for clause (a) and entry relating thereto, the following clause and entries relating thereto shall be substituted, namely :-

(a) when presented to the High Court -

(i) by the claimant for enhancement ten percent of the amount of award passed of the by the Motor Accident Claims enhanced Tribunal amount claimed in appeal.

(ii) in matters other than sub- Thirty rupees clause (i) above.

3. Learned counsel for the petitioner submitted that the Amendment Act, 2008 in so far as it substitutes Article 11 -a(i) in the second schedule of the Act is discriminatory as only the claimant is required to pay the ad valorem court-fee on the enhanced amount of compensation whereas, the Insurance Company and the owner can file an appeal on fixed court-fee. It is further submitted that prescription of ad valorem court-fee without upper limit is arbitrary. It is also urged that excessive levy in the form of court-fee at the rate of 10% of the enhanced amount claimed in appeal would amount to denial of access to justice. It is further urged that such an amendment cannot be introduced by the State Legislature with a view to cut-short the litigation. In support of his submissions, learned counsel for the petitioner has placed reliance on decisions of Supreme Court in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, , *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , *Adhunik Grah Nirman Sahakari Samiti Ltd. and Others Vs. State of Rajasthan and Another, State of Haryana Vs. Smt. Darshana Devi and Others*, *M/s. Central Coal Fields Ltd., and another Vs. M/s. Jaiswal Coal Co. and others*, 1980 (Supp.) SCC 471 and *Mahadev Naik Vs. State of Karnataka and another etc.*, AIR 2002 Kar 338.

4. On the other hand, learned Advocate General for the respondents submitted that court- fee as per the amended provision will have to be paid only when the claimant wants to file an appeal for enhancement of the amount of compensation already awarded by the MACT. Care has been taken to provide that where the claim for compensation is dismissed by the MACT, the claimant can file an appeal on the fixed nominal court-fee. It is further submitted that large numbers of frivolous appeals claiming enhancement of compensation are being filed every year due to which prompt disposal of other bona-fide appeals is being delayed/ hampered. The concept of quid pro quo differentiating fee from tax has been mellowed down almost to the point of oblivion by the Supreme Court. And, in any case even that concept has not to be seen with regard to individual litigant or individual case, but there should be only abroad co-relation between the totality of fee and totality of expenses on the services rendered. In this connection, learned counsel for the respondents has invited our attention to paragraph 18 of the return filed on behalf of the respondents. It is also submitted that if a claimant is unable to pay the court-fee on account of financial constraints, he can always file an appeal as an indigent person under Order 44 of the Code of Civil Procedure. It is also submitted that issue relating to fixation of upper limit of the court fee is academic and does not arise in the facts and circumstances of the case and the decision in the case of *Adhunik Grah Nirman Sahakari Samiti Ltd. (supra)* is distinguishable. Learned Advocate General in support of his submissions has placed reliance on decisions of Supreme Court in

All India Judges" Association and others Vs. Union of India and others, 2002 SCC (L&S) 508, All India Judges" Association and others Vs. Union of India and others, (2006) 12 SCC 178, All India Judges Association and others Vs. Union of India and others, (2006) 12 SCC 183, All India Judges Association and others Vs. Union of India and others, (2006) 12 SCC 187 , Secretary to Government of Madras and another Vs. P.R. Sriramulu and another, and Division Bench decision of this Court in the case of Manohar Wadhvani Vs. Bank of Baroda, ILR [2011] M.P. 1932.

5. We have considered the submissions made on both sides. Reference to Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy.[See: Bhaiji Vs. Sub Divisional Officer, Thandla and Others, and A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another, . It is well settled in law that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to alleviate problems which are manifest by experience and that the elected representatives assembled in a legislature and enact laws which they consider to be reasonable for the purpose for which they are enacted. [See: Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, The Statement of Objects and Reasons of Act No.6 of 2008 contains declaration that it has been decided to levy the court fee on the memorandum of appeal when presented to the High Court by the claimant for enhancement of the award passed by the Motor Accident Claims Tribunal by making suitable amendment in Article 11 of Schedule II to the Principal Act. Having regard to inflationary trends and the increased cost of administration of justice, the increase in court-fee is necessitated. The Supreme Court in All India Judges" Association Vs. Union of India and others, , All India Judges" Association and others Vs. Union of India and others, (2006) 12 SCC 183, All India Judges" Association and others Vs. Union of India and others, (2006) 12 SCC 187 and in the order dated 12.7.2010 passed in Writ Petition (C) No. 1022/ 89, has given various directions to the Government, in the light of Justice Shetty Commission recommendations, requiring considerable amount of funds most of which will fall under the head of administration of justice. This has enormously increased the financial burden on the State towards maintaining the Judicial Establishment of the State. The burden has also been substantially increased with the implementation of the Sixth Pay Commission. There is great emphasis on increase in the Judicial infrastructure, which again requires substantial financial resources.

6. In All India Judges" Association and others Vs. Union of India and others. 2002 SCC (L&S) 508, it has been directed that entire expenditure on account of recommendations of Justice Shetty Commission be borne by respective States. It has been held that it is for the State to increase the court-fee or to approach the Finance Commission or the Union of India for more allocation of funds. In the

order dated 12.7.2010 passed in W.P.(c) No. 1022/89, once again Supreme Court has reiterated that funds internally generated by way of court-fees should be deployed for infra-structure of the subordinate Judiciary and Government may consider amending the Court Fees Act.

7. In the return which has been filed in W.P. No. 1796/2007, it is stated on behalf of the State Government that there has been steady decline in collection of court-fee. The amount collected by way of court-fees and the amount spent by the State Government on the establishment expenditure of Civil and Session Court in the State, which has been mentioned in paragraph 7 of the return is reproduced below for the facility of reference:-

Year

Court collected

Fees

Year

Amount spent

2000-01

24 crores

2000-01

72 crores

2001-02

16.5 crores

2001-02

68 crores

2002-03

29 crores

2002-03

70 crores

2003-04

20 crores

2003-04

2004-05

2005-06

75 crores

106 crores

102 crores

The expenditure incurred in respect of the High Court has also been mentioned in the form of chart in para 7 of the return, which shows the steady increase. The chart is reproduced below for ready reference:

2000-01

13.5 crores

2001-02

14 crores

200-03

14.5 crores

2004-05

17 crores

2005-06

21.5 crores

It has further been averred in the return that the main reason for increase in expenditure on Court is the implementation of recommendation made by Justice Shetty Commission. The aforesaid averments made in the return have not been controverted by the petitioner. In order to meet the expenditure, the Government has to raise funds through court-fee. In the aforesaid context, the need has arisen for amendment in the Court Fees Act, which is otherwise discernible from the statement of objects and reasons.

8. It is equally well settled legal proposition that laws relating to economic activities should be viewed with greater latitude. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation, as compared to other areas where fundamental rights are involved. Since economic matters are extremely complicated, this inevitably entails special treatment for special situations. The State therefore has to be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field, or invalidate such law. [See: Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi,

9. In the backdrop of well settled legal position, we may advert to the facts of the case. Prior to coming into force of Act No.6 of 2008, an appeal could be filed by the claimant seeking enhancement of the amount of compensation on fixed

court-fee. In other words, a claimant was exempted from payment of court-fee on ad-valorem basis. By the impugned amendment, the aforesaid exemption has been withdrawn and only those claimants, who have received compensation, have been made liable to pay ad-valorem court fee like other litigants. Article 11 (1) (i) of the Act as amended by Act No.6 of the 2008 has been assailed on the ground that the same is discriminatory. In order to substantiate the plea of discrimination, it has to be shown that similarly situated persons are being subjected to different treatment. In the instant case, the insurance company, owner of the vehicle and the claimant cannot be said to be similarly situated persons. u/s 149(2) of the Motor Vehicle Act, 1988 (in short "the 1988 Act"), the insurance company can contest the claim on limited grounds mentioned therein, except in those few cases where the MACT grants permission to the Insurance Company to take other defences. Naturally the scope of appeal also becomes limited to such grounds of defence. Further, the Legislature will be deemed to have knowledge, experience or statistics that insurance companies have law departments in which the awards passed by the tribunals are scrutinised and thereafter a decision is taken whether to file or not to file an appeal. Whereas the appeals by the claimants seeking enhancement of compensation that are filed in large numbers and in an indiscriminate manner which gives rise to the suspicion, if not inference, that there is an increase in the tendency of litigants to gamble in litigation. Similarly, if the owner of the vehicle wants to file an appeal against the award passed by the tribunal he is required to deposit at least a sum of Rs.25,000/- along with the memorandum of appeal as required by Proviso to Section 173(1) of the 1988 Act. The owner as well as the insurer are saddled with the liability to pay the amount of compensation whereas the in case of claimant, the amount of compensation is awarded by the tribunal. For the aforementioned reasons, we have no hesitation to hold that the petitioner has not been able to substantiate the plea of discrimination. Accordingly, the plea cannot be upheld.

10. The next contention raised on behalf of the petitioner is that requirement of payment of ad-valorem court fee without upper limit is arbitrary and discriminatory, because in respect of plaint, written statement, set off, counter claim and memorandum of appeal presented in civil or revenue court, upper limit of Rs. 1.5 lacs as court fee has been prescribed. Thus, if a claimant seeks enhancement of amount of compensation by Rs. 15 Lacs he would have to pay Rs. 1.5 Lacs as court fee. In the writ petitions under consideration, on facts, the aforesaid issue does not arise. It is well settled that Courts do not decide academic questions which do not arise on the facts of the case. [See *Basant Kumar Vs. State of Rajasthan and Others*, Besides that it has been urged on behalf of the State that the decision in the case of *Adhunik Grah Nirman Sahakari Samili Ltd. (supra)* is distinguishable. It was argued that the Supreme Court in that case was faced with the proceeding for grant of probate and letters of Administration, which being contentious was to be registered as a suit. In the aforesaid context, it was held that if in respect of all other suits upper limit of Rs.

15,000/- on the court-fee is fixed there is no logical justification for excluding the proceeding for grant of probate and letters of administration, which are registered as suits, without fixing upper limit for court-fee. It is further submitted on behalf of the respondents that an appeal filed against the award passed by the MACT cannot be equated with the regular appeals against decrees filed either under the CPC or under other enactments. Be that as it may, we leave the issue to be dealt with in an appropriate case.

11. Now we may deal with the submission made on behalf of the petitioner that prescription of ad-valorem court fee at the rate of 10% would amount to denial to access to justice. We are not impressed by the aforesaid submission for the simple reason that if a claimant has no means to pay the ad-valorem court fee he can always sue as an indigent person under Order 44 of the Code of Civil Procedure. Accordingly, the aforesaid contention also does not deserve acceptance.

12. Before parting with the case, we may restate the well settled legal principle that the right to file an appeal vests in the suitor on the day when an action is initiated. The said right is a substantive right and cannot be taken away or even curtailed by an enactment which is not retrospective unless it says so expressly or by necessary intendment. [See: State of Bombay Vs. Supreme General Films Exchange Ltd., and Ramesh Singh and another Vs. Cinta Devi and others, . Thus in view of the aforesaid enunciation of law, the appeals which are filed in respect of the claims instituted before the Motor Accident Claims Tribunal before 2.4.2008, fixed court fee would be payable whereas in respect of the appeal against the awards in respect of claims filed on or after 2.4.2008 ad-valorem court fee as provided under the Act No.6 of 2008 would be payable.

13. In view of the preceding analysis, we do not find any merit in the writ petition. The same fails and is hereby dismissed.