

(2010) 11 KL CK 0238
In the High Court Of Kerala
Case No : O.P. (MACT) No. 449 of 2010 (O)

Gopi	Vs	APPELLANT
Biju and Others		RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 397(2)

Citation : (2011) 1 KLJ 347

Hon'ble Judges : C.T. Ravikumar, J

Bench : Single Bench

Advocate : R.T. Pradeep, V. Vijulal, for the Appellant; M.A. Asif (Govt. Pleader), for the Respondent

Judgement

C.T. Ravikumar. J.

1. The petitioner who sustained injuries in a motor accident on 23.5.2010 filed a claim petition before the Motor Accidents Claims Tribunal, Attingal. In the accident he had sustained the following injuries:

- (1) Fracture both bones left leg
- (2) Multiple abrasions.

Contending that the petitioner is a self employed person and the aforesaid injuries disabled him from earning anything for the past several months he submitted an application seeking exemption from payment of court fee in terms of the provisions under Rule 397(2) of the Kerala Motor Vehicles Rules, 1989 (for short "the Rules"). The said application submitted by the petitioner was dismissed as per Ext. P2. It is challenging Ext. P2 order passed by the Motor Accidents Claims Tribunal, Attingal in I.A. No. 4149 of 2010 that this writ petition has been filed. Before looking into the sustainability or otherwise of Ext. P2 it is relevant to refer to Section 397(2) of the Motor Vehicles Act. It reads thus:-

397. Fees. (2) The Claims Tribunal may, in its discretion, exempt a party from

the payment of the fee prescribed under sub-rule (1):

Provided that when the claimant succeeds and an award is made in his favour, the party ordered by the award to pay the compensation shall deposit the amount of compensation before the Claims Tribunal and the claimant shall be paid only such amount available after deducting the Court Fee which would have been paid by the claimant had he not been exempted under sub- rule (2) of this rule.

2. Thus, going by the aforesaid provisions, the Claims Tribunal may in its discretion, exempt an applicant from the payment of the fee prescribed under Rule 397(1), based on an application for that behalf. When something is to be done within the discretion of an authority that something has to be done according to the rules of reason and justice and certainly, not according to the private opinion of that authority. The maxim "Discretio est discernere per legum quid sit justum" means discretion consists in knowing what is just in law has to act as a guiding factor while exercising such a power. I may now, refer to a decision of this Court in Raman Nair v. Mukundan Nair (2005 KHC 1176). After considering the discretionary power u/s 397 of the Ruled this Court held as hereunder:-

An exemption from payment of court fee in motor accident claims is not similar to dispensation of court fee and granting permission to pursue the suit as an indigent person. Therefore, a rowing inquiry, as provided under the Code of Civil Procedure, is not called for. Though it is the discretion of the Tribunal, it may exempt the payment of court fee prescribed under sub-r.(1) of Rule 397 of the Rules, as the court fee could be realised when the claim petition is allowed and the amount awarded to the claimant.

In the light of the above discussion and also the aforesaid judgment, Ext. P2 has to be looked into. A bare perusal of Ext. P2 would reveal the total non-application of mind. Though under Rule 397(2) of the Rules, the discretion has to be exercised in a judicious manner while dealing with an application made thereunder Ext. P2 would virtually reveal only an arbitrary exercise of that power. The application of the petitioner was rejected as per Ext. P2 as hereunder:

Court Fee not paid. OP is rejected.

Though the application itself was filed for exemption from payment of the fee prescribed under Rule 397(2) of the Rules without even considering the prayer made in the said application it was dismissed for non-payment of the court fee. Surprisingly, there is not even a discussion regarding the prayer made in the application. I am of the view that such an order cannot be said to be one passed in tune with the provisions under Rule 397(2) of the Rules and it will not in any way reflects a proper exercise of the discretion and it is liable to be set aside. In the circumstances, Ext. P2 is set aside and the matter is remitted back to the Tribunal for fresh consideration in accordance with the provisions under Rule 397(2) of the Rules and also in the light of the decision of this Court in Raman

Nair v. Mukundan Nair (supra) as also the observations made this writ petition.
The writ petition is disposed of accordingly.