(1980) 08 KL CK 0022

In the High Court Of Kerala

Case No : O.P. No. 2922/80M

Leelamma Babukutty APPELLANT

Vs

Joseph Samuel and Brothers RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 110, 110A, 110B, 110C, 110D

Citation : (1982) ACJ 133

Hon'ble Judges : V. Khalid, J;P. Subramonian Poti, J

Bench : Division Bench

Advocate : T.M. Cherian, for the Appellant; M.N. Sukumaran Nair and N.A. Muraleedharan for Respondent No. 1 and John Mathew, Government Pleader, for the Respondent

Judgement

Subramonian Poti, J.—Before us appearing earlier as a revision petition the same matter is now before us as a petition under Article 227 of the Constitution of India. Though in a revision the order would not be challenged it may be a proper matter for consideration in a petition under Article 227 of the Constitution of India.

2. It is the propriety of an order passed by the District Judge of Quilon acting as Claims Tribunal under the Motor Vehicles Act that has come up for consideration in this petition. The Motor Vehicles Act has conceived a new scheme in Section 110 and 110A to 110D by way of adjudication by Claims Tribunal in place of Civil Courts. Evidently this has the object of expeditious disposal of claims for compensation in respect of accidents involving death or of bodily injury to persons. The scheme indicates that it is not intended merely as a speedy remedy but a more expeditious remedy because of the provisions relating to payment of Court Fee. The Claims Tribunal Rules have been made in 1977 in the State of Kerala. Rule 23 or the said Rules provides for payment of court fee in an application u/s 110A of the Act. The fee prescribed is considerably lower than the fee that might have to be paid by a claimant in a civil suit for compensation for

such injury or for death. Even so the fee prescribed by Rule 23 is not inconsequential. The provisions of Sub-rule (2) of Rule 23 enables the Claims Tribunal in its discretion to exempt the party from payment of fee prescribed under Sub-rule (1) of Rule 23. That is a very salutary provision for despite the reduced scale of court fee under Rule 23(1) there may be several instance where an aggrieved party may not be able to seek effective relief for want of means to pay even the fee at the reduced scale. To take for instance the case before us as a claim for compensation of Rs. 14,85.000 the fee payable under Rule 23(1) would be Rs. 14,222.50.

3. The claimant has before the Tribunal which at that time was the District Court, Quilon, where the wife and son of a person who by reason of an accident caused by a motor vehicle met with death. The claim for compensation of Rs. 14,85,000 is said to be based upon the assessment to income tax of the deceased for three years, evidently, treating that as evidence of his annual income. Despite such income of the deceased, according to his wife, nothing was left behind by him. That is the reason why she has invoked Rule 23(2) to enable her to prosecute the claim petition without payment of court fee.

4. The discretion vested in Tribunal under Rule 23(2) is a judicial discretion and though the grounds on which the exemption is to be granted by the Tribunal are not indicated it is nor difficult to discern the guidelines from the nature of the provision itself. In capacity of the person to prosecute his claim by paying court fee under the rule may be a good ground and that was the ground urgued by the claimants in this case. We regret to say that the learned District Judge who functioned as Claims Tribunal has failed to make a rational approach in disposing of the claim for exemption. The reasons stated by him in the order for refusal of exemption are (1) if the deceased husband had a monthly income of Rs. 3,000 it is rather difficult to believe that he had no substantial savings; (2) a person in the position of the deceased was likely to leave behind a valuable estate; (3) the Petitioners are legal heirs and in the absence of proof as to how much they have inherited aid what all properties they held, it is not safe to permit the Petitioners to prosecute the proceedings without payment of the State''s dues.

5. We have to remember that the State did not even file a counter to the request for exemption. None was examined on behalf of the State to counter the case of the claimants that they have no aspects. The wife of the deceased was examined as P.W. 1. She categorically spoke to the fact that they have not inherited any property, movable or immovable. There has been no effective cross-examination on this point and nothing has been brought out to discredit P.W. 1. She could do nothing more than to swear that there are no assets left behind by her husband. If these be the circumstances how a court could assume that the deceased man who was earning Rs. 3,000 per month must have had savings and must have left behind a valuable estate is not evident from the order. This is the reason why we characterised the order of the learned Tribunal as irrational. We set aside the order and direct the claims Tribunal to examine the question properly and in the

light of what we have stated here. In doing so we believe that a more objective approach would be made.

6. Before leaving this case we would like to point out to the State Government the need for reconsidering the proviso to Rule 23(2) of the Rules. It defeats the object of the provision in the proviso and takes away what has been conferred by the proviso to Rule 23(2). Though the main part of Rule 23(2) provides for exemption the proviso contemplates payment of the prescribed fee in respect of which exemption has been granted before a copy of the judgment is obtained. A person does not get the fruits of his decree the moment a judgment is passed. He has invariably to execute the decree to obtain it and, therefore, if he is called upon to pay court fee before he obtains a copy of the judgment it is an effective fetter on the execution that he may take out on the basis of the judgment that he has obtained. That virtually defeats the benefits that would accrue to him by the reason of the exemption contemplated by the main part of the Sub-rule. The proper course would be not to provide for such payment at that stage but direct bringing into court all the proceeds obtained by him by execution and enable him to draw it from court only after payment of court fee or adjustment. The spirit in which the provision for exemption is seen made in the rules calls for this treatment to the rule as expeditiously as possible.