
(1999) 11 OHC CK 0007

In the Orissa High Court

Case No : Miscellaneous Case No. 398 of 1998 (Arising out of M.A. No. 371 of 1998)

Mangu Pangi and Another

APPELLANT

Vs

Rama Chandra Padhi and Others

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Orissa Motor Vehicles (Accidents Claims Tribunals) Rules, 1960 — Rule 22

Citation : (2001) ACJ 1515 : (2000) 89 CLT 49 : (2000) 1 OLR 53

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : A.K. Choudhury, H.K. Panigrahi, J. Dash and D.K. Samantray, I.C. Dash, T. Mohanty and V. Prithviraj, S. Jena, Addl. Standing, for the Appellant; S.K. Dash, B.N. Rath, Shrinivas Mohanty, S.K. Sanganeria, B. Misra, D.P. Sarangi, S.C. Sahoo and Rabindranath Mohanty, for the Respondent

Judgement

P.K. Misra, J.—This application relating to exemption from payment of court-fee has been heard along with several other matters of similar nature. The" question relates to exemption of court-fee, as per the Notification issued by the State Government on 7th June, 1994, published in the Orissa Gazette, Extraordinary, No. 670 dated 10th June, 1994. The relevant portion of the Notification is extracted hereunder :

"LAW DEPARTMENT

NOTIFICATION

The 7th June, 1994

S. R. O. No. 575/1994 In exercise of the powers conferred by Section 35 of the Court -fees Act, 1870 (VII of 1 870), the State Government do hereby remit in the whole of the State of Orissa all fees mentioned in Schedule I and II to the said Act payable for filing or instituting cases or proceedings in any Court in Orissa by the following categories of persons, namely :

- (i) member of Scheduled Castes;
- (ii) member of Scheduled Tribes;
- (iii) women;
- (iv) minors;
- (v) physically handicapped persons;
- (vi) persons whose annual income does not exceed twelve thousand rupees; and
- (vii) persons who are otherwise entitled to legal aid under the Orissa State Legal Aid and Advice Scheme, 1981.

Explanation - ** ** **

(No. 8244-II-J-15/1993-L.)

By order of the Governor

P.K. Panigrahi

Secretary to Government".

It is submitted by the counsels that the benefit of this Notification should also be made applicable to payment of Court-fee under Rule 22 of the Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 1960. On the other hand, it is submitted by the learned Standing Counsel that since the court-fee payable under any claim case before the Claims Tribunal or any appeal arising therefrom is not payable under Schedules I and II of the Court-fees Act, the exemption cannot be extended.

2. The learned counsels appearing for the claimant-appellants in the various appeals as well as the learned counsels appearing Amicus Curiae almost in one voice have submitted that the Notification being beneficial in nature should be extended to all types of cases and it must be taken that the Government intended to extend the benefit to all cases including the cases under the Motor Vehicles Act. It is also submitted that otherwise an anomalous situation may be created. Some of the learned counsels have gone to the extent of saying that it is an inadvertent omission which should be remedied.

3. Law is well settled that even in cases of inadvertent omission where the meaning of the statute or the provision is otherwise clear, it is not open to the Court to supply the omission as adoption of such a course would amount to judicial legislation and it should be left to the appropriate Legislature to rectify the mistake by appropriate amendment.

4. The Notification, as already extracted, is issued u/s 35 of the Court-Fees Act, 1870. Section 35 of the Court-Fees Act is extracted hereunder :

"35. Power to reduce or remit fees - The appropriate Government, may from

time to time by notification in the Official Gazette, reduce or remit, in the whole or in any part of the territories under its administration all or any of the fees mentioned in the First and Second Schedules to this Act annexed, and may in like manner cancel or vary such order."

As apparent from Section 35 itself, the appropriate Government is empowered to remit all or any of the fees mentioned in the First and Second Schedules of the Act. Chapter-II of the Court-Fees Act envisages the levy of fees in High Courts on their original sides and levy of fees in Presidency Small Cause Courts and fees on documents filed in High Court in their extraordinary jurisdiction; in their appellate jurisdiction or as Courts of reference and revision. Chapter-III envisages payment of fees in other Courts/offices. The First and the Second Schedules of the Court-Fees Act indicate the fees payable in various cases/applications. A perusal of the various provisions of the Court-fees Act leaves no room for doubt that the fees prescribed to be paid are applicable to cases covered under any of the provisions of the Court-fees Act and not to cover cases under any special statute.

5. Before establishment of Claims Tribunals in various States, the persons affected by tortious act involving any motor vehicle were required to file suits claiming damages. There cannot be any doubt that but for the establishment of Claims Tribunals, suits would have been filed and as such, provisions of the Court-fees Act would have been applied. However, in the Motor Vehicles Act, 1939, by insertion of Section 110-A provision was made for establishment of Motor Accident Claims Tribunal. Similar provisions are now made in Chapter-XII of the Motor Vehicles Act, 1988. Section 165 of the Motor Vehicles Act, 1988, envisages that State Government may establish one or more Motor Accident Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the motor vehicle. Section 175 of the Motor Vehicles Act, 1988, provides that where any Claims Tribunal has been constituted, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation. Thus, there cannot be any doubt that on the establishment of Claims Tribunal, the jurisdiction of Civil Court is ousted. Section 166 of the Motor Vehicles Act, 1988, contemplates filing of application for compensation. Section 169 provides the procedure and powers of Claims Tribunals. Section 176 empowers the State Government to make rules forth purpose of carrying into effect the provisions of Sections 165 to 174 and envisages that the rules may provide for the form of application for claims for compensation and the fees, if any, to be paid in respect of such applications. It is this apparent that the fee payable in respect of the claim application is as contemplated under the Motor Vehicles Act and the Rules made thereunder in exercise of the powers u/s 176, and not the Court-fees Act.

6. In exercise of corresponding provisions in Section 111-A of the Motor Vehicles Act, 1939, which has been repealed by the Motor Vehicles Act, 1988, the State Government had framed the rules, known as the Orissa Motor Vehicles

(Accidents Claims Tribunals) Rules, 1960. Rule 22(2) of the aforesaid Rules prescribes the fees payable in claim applications. Under Rule 22(3), it is provided that the fee for filing an appeal shall be one-half of the fee payable for the claim application. It is thus apparent that the fee payable in claim application as well as in appeal arising therefrom is governed by the provisions contained in Rule 22 of the Orissa Motor Vehicles (Accidents Claims Tribunals) Rules, 1960, framed under the provisions contained in the Motor Vehicles Act. In view of the savings clause contained in Section 217(2) of the Motor Vehicles Act, 1988, such Rules must be deemed to be continuing even after the Motor Vehicles Act, 1988 came into force. Since power of exemption envisaged in Section 35 of the Court-fees Act cannot be made applicable for payment of fees under other special statutes, there cannot be any doubt that the Notification issued by the State Government cannot govern a case under the Motor Vehicles Act.

7. Under Rule 22(2) of the Orissa Motor Vehicles (Accidents Claims Tribunals) Rules, 1960, there is a provision for exemption from paying the court-fee, but under the proviso to Rule 22(2), it is laid down that in case the claim application is allowed, the claimant shall be liable to pay the court-fee and such court-fee shall be recovered at the time of payment of the award. On the other hand, if an exemption is granted under the Notification issued by the State Government, there would not be any occasion for payment of court-fee at the threshold, or after the decision. Thus, the litigants filing applications/appeals under the Motor Vehicles Act maybe at a disadvantage. However, that cannot be a ground to extend the provisions of the Notification. The situation thus created is an unhappy situation, but in view of the provisions contained in Section 35 of the Court-fees Act, no other view can be taken, as such provision only empowers issuance of Notification relating to payment of fee under Schedules I and II of the Court-fees Act and not under any other Act. Though this may create an anomalous situation, this is, however, a matter which should be considered by the State and the Rules may be amended incorporating similar provisions in Rule 22 of the Orissa Motor Vehicles (Accidents Claims Tribunals) Rules.

8. During hearing of this matter, it was brought to my notice that in many cases the exemption under this Notification has been applied to appeals arising against the awards of Claims Tribunals. As a matter of fact. I have also passed many such orders on previous occasions. In the case reported in 1995 (II) OLR 277 (Neshtar Kaur etc. v. Arbail Singh and Ors.), it was assumed that the exemption can be granted in claim cases and the discussion on revolved round the question as to whether the Notification had any retrospective effect. The question now specifically raised was not discussed at all. Since orders have been passed without considering the applicability of Section 35 of the Court-fees Act and the Notification thereunder, such orders do not have any precedent value.

9. For the aforesaid reasons, the submission that the exemption should be granted under the Notification issued u/s 35 of the Court-fees Act is not acceptable. However, in exercise of power under Rule 22 of the Orissa Motor

Vehicles (Accidents Claims Tribunals) Rules, 1960, which can be exercised by an appellate Court, as has been observed in the decision reported in *Neshtar Kaur and Others Vs. Arbail Singh and Others*, , the appellants are exempted from paying the court-fee. The Misc. Case is disposed of accordingly.

10. Apart from Shri A.K.Choudhury, the learned counsel for the appellants, I have heard Smt. Sujata Jena, the learned Additional Standing Counsel for the State and Sarbashree R.N.Mohanty, S.K.Dash, Srinivas Mohanty, B. Mishra, B. N. Rath, D.P.Sarangi, S.C.Sahoo and S.K.Sanganeria for appellants in other appeals and Sri I.C.Dash, Sri T. Mohanty and Sri V. Prithviraj as amicus curiae. I am thankful to all the learned counsels who have rendered valuable assistance in the matter.

11. A copy of this order be handed over to Smt. S. Jena, Additional Standing Counsel, for onward transmission to the State to consider the question of effecting appropriate amendment in the Court-fees Act and/ or in the Orissa Motor Vehicles (Accidents Claims Tribunals) Rules, 1960, to remedy the anomalous situation. In this connection, the observation of Hon"ble Justice Krishna Iyer in paragraph-8 of the decision reported in *State of Haryana Vs. Smt. Darshana Devi and Others*, to the following effect :

"8. While we dismiss the petition for leave, we hope the Haryana State will hasten to frame rules under the Motor Vehicles Act to enable claimants for compensation to be free from payment of Court-fee."

may be kept in mind.