
(1984) 12 KL CK 0016
In the High Court Of Kerala
Case No : A.S. No. 107 of 1979

M/s. Malabar Motor Transport Co-Op Society Ltd. APPELLANT
Vs
T.K. Amu and Ors RESPONDENT

Date of Decision : 30-12-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35

Citation : (1985) KLJ 75

Hon'ble Judges : Bhaskaran, Acting C.J.; M.P. Menon, J

Bench : Division Bench

Advocate : S. Narayanan Potti, S. Sankara Subban and Dr. George Mathew, for the Appellant; S. Easwara Iyer and E. Subramani, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran. Ag. C. J.

1. This appeal is by the 1st defendant in a suit for recovery of damages arising out of the death of one T. K. Ali Koya, son of plaintiffs 1 and 2, by the injuries sustained on account of the accident involving the bus KLZ 175 of which the appellant-1st defendant was the owner. The 2nd defendant was the driver of the vehicle. The Kerala State Insurance Corporation is the third party. The plaintiff's who instituted the suit under Order XXXIII of the Code of Civil Procedure, inasmuch as they had not the capacity to pay court-fee, estimated their claim at Rs. One Lakh. The trial court at the first instance decreed the suit on 186-1976 for Rs. 96,100/-. However, on appeal, as per the judgment in A. S. No. 156 of 1976 dated 7-4-1977, this Court set aside the judgment of the court below and remanded the matter to that court for fresh disposal. As per the revised judgment, which is the one under appeal the court below decreed a sum of Rs. 20,000/- with proportionate costs and interest thereon at 6% from the date of plaint. The court also directed as follows:-

Out of this the sum of Rs. 20,000/- with interest payable as compensation will be

paid by 3rd defendant namely the State Insurance Officer as provided section 110(B) of the Motor Vehicles Act. The costs including the full court fee will be payable by defendants 1 and 2 alone and 3rd defendant will not be liable for the costs. A decree will be drawn up in the above terms. Send copy of the decree to the Collector of Kozhikode as provided in Order 32 (1).

The ground taken in appeal and argued before us is confined to the question as to costs. The appellant had filed this appeal feeling aggrieved by the direction by the court below that the costs including the full court fee will be payable by defendants 1 and 2 alone and the 3rd defendant will not be liable for the costs. The counsel for the appellant submitted that the direction in the judgment as to costs is patently erroneous. According to him, normally, as a rule, costs should follow the cause, and the costs received or given should be in proportion to the success or failure in respect of the suit claim by the respective parties. In support of this contention he relied on the decision of the Supreme Court in *Soli Pestonji Majoo and Others Vs. Gangadhar Khomka*, where in paragraph 6, at page 604 of the report, the Supreme Court observed as follows:-"We accordingly allow this appeal to the extent indicated above and modify the decree of the Calcutta High Court. The plaintiff-respondent will be awarded costs proportionate to his success in the present suit as between attorney and client.

He also cited the decision of the Nagpur High Court in *Jamshed Karimuddin v. Kunjilal Harsukh* (A. T. R. 1938 Nagpur 530) In that decision arising out of a suit for damages for breach of the contract, it was observed:I therefore set aside the decree of the lower Appellate Court so far as the costs are concerned and direct that costs shall be proportionate to success and failure throughout.

That normally the costs should follow cause and it should be in proportion to the success" or failure of the parties is a well accepted principle. That does not, however, mean that this is an invariable rule, and the court has no discretion in the matter. In fact, according to us, the acceptance of such a rigid principle would run counter to the provisions contained in section 35 of the CPC which vest in the Court a discretion in the matter. No doubt, that discretion could not be exercised capriciously, arbitrarily, unfairly and unreasonably. All the same, when, on the facts and in the circumstances of the case, the court finds that where the plaintiff in a suit does not succeed fully, some equitable directions in regard to the burden with respect to the court-fee between the parties have to be given by the Court; it should not be considered to be powerless to do so. In this case, we have already noticed that the plaintiffs had estimated the claim at Rs. One lakh. If this estimate was made without any bona fides and in a callous manner, that would be a good reason for the court to apply the general rule that costs should follow cause, and the parties will have to bear it in proportion to their success or failure. However, in this case we find that the trial court as per the decree granted on 18-6-1976 allowed a sum of Rs. 96,100/-as compensation which was almost in entirety of the claim. It is true that that decree was set aside and the matter was remanded to the court below for fresh disposal, and as

per the revised judgment the plaintiffs have been given a decree only for Rs. 20,000/- which is far below the claim of Rs. One lakh put forward by the plaintiffs in the suit. The point, however, is whether the plaintiffs initiated a vexatious proceedings making such an estimate of the compensation as no reasonable man would indulge in. The very fact that the trial court was inclined to allow the claim to the extent of Rs. 96,100/- as against the total claim of Rs. One lakh, would go to show that the plaintiffs could not be accused of making a fantastic and unreasonable claim. We have to bear in mind that the suit was instituted by the plaintiffs, the aged parents of the deceased Ali Koya, in forma pauperis. The court-fee payable on the plaint is Rs. 9,991/-. If the plaintiffs are asked to pay this amount by way of court-fee out of the compensation of 20,000/- awarded, the net result would be that what would be left in their hands after such payment would be Rs. 10,009/-only. Probably it might be correct in a technical sense, taking a strict legal view of the matter. This being not merely a court of law, but also of justice, equitable considerations demand a more pragmatic approach to be made in the light of the facts and circumstances of the case. We are, therefore, of the opinion that we would not be justified in interfering with the discretion exercised by the court below in directing defendants 1 and 2 to pay the Government the entire court-fee payable on the plaint claim following the decision of the Madras High court in Krishna Gounder v. Narasingam (A. I. R. 1962 Madras 309). The counsel for the appellant sought to distinguish the Principle laid down in the said decision of the Madras High Court relied on by the court below, stating that whereas in that case as against the plaint claim of Rs. 12,000/- a decree for Rs. 6,000/- had been given by the court. We do not think that any hard and fast rule could be laid down with respect to the ratio between the plaint claim and the decree amount while passing orders as to costs. Various factors like the total amount claimed, the total amount decreed, the court-fee payable, the circumstances under which the claim was made and part thereof was rejected, the capacity of the victims of the deceased person who instituted the suit to pay court-fee if that burden is cast on the plaintiff (e) and other material considerations should enter into the mind before the court passes an order with respect to costs. It is in this context it becomes worthwhile to notice that the plaintiffs could not be accused of making an utterly callous estimate in the light of the fact that the trial court itself was inclined to grant a decree for Rs. 96,100/-as against a total claim of Rs. One lakh, which, of course, subsequently was set aside by this Court for having found that there were defects in the approach made by that court. In this case it could not be said that it was without considering the relevant factors having bearing to the decision that the court below directed defendants 1 and 2 to pay court-fee payable on the plaint.

For the foregoing reasons we dismiss this appeal; however in the circumstances of the case we would direct the parties to bear their respective costs in this appeal.