

(1990) 12 KL CK 0037
In the High Court Of Kerala
Case No : M.F.A. No. 111 of 1986

New India Assurance Co. Ltd.

APPELLANT

Vs

Koyammu and Others

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 122, 35
Constitution of India, 1950 — Article 225, 226, 227
Motor Vehicles Act, 1988 — Section 110

Citation : (1991) ACJ 429

Hon'ble Judges : K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : P. Vijayaraghava Kaimal, for the Appellant; P. Ramakrishnan Nair and K.P. Dandapani, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Balanarayana Marar, J.—The insurer is the appellant. Appeal is against the award of Motor Accidents Claims Tribunal, Kozhikode in M.A.C. No. 142 of 1981. The accident happened on 26.9.1980. First respondent was a passenger in bus KLD 7914 owned by 3rd respondent and driven by 2nd respondent. He sustained injuries when the bus met with the accident as a result of rash and negligent driving of the vehicle by second respondent. An amount of Rs. 25,000/- was claimed as compensation from respondent Nos. 2 and 3 and the appellant, who is the insurer. The petition was resisted by the owner, driver and the insurer. Appellant, the insurer, inter alia, contended that its liability is limited as provided in the Motor Vehicles Act. It further contended that its liability has to be fixed at Rs. 5,000/- since the claimant was a passenger. Tribunal awarded an amount of Rs. 25,000/- as compensation with interest at 12 per cent per annum from the date of petition with costs which include the advocate's fee as provided in the Civil Rules of Practice for Suits. Appellant was directed to pay the amount. It was further directed that 95 per cent of the amount awarded shall be deposited in fixed deposit in a nationalised bank in the name of the claimant for a period of

seven years from the date of deposit with a further direction to pay monthly interest thereof to the claimant every month. Aggrieved by that decision the insurer has come up in appeal.

2. Two points arise for consideration:

- (i) Whether the insurer is liable to indemnify only an amount of Rs. 5,000/-; and
- (ii) Whether the claimant is entitled to get advocate's fee as provided in the Civil Rules of Practice for Suits.

3. On the first point it is urged by learned counsel for the appellant that the claimant was only a passenger in the bus and as such the liability of the insurer is limited to Rs. 5,000/-. Another passenger who sustained injuries in the same accident has moved the Tribunal as per M.A.C. No. 80 of 1981. The award passed therein was challenged by the insurer before this court in M.F.A. No. 556 of 1984. This court in the judgment pronounced on 3.8.1989 held that the liability of the appellant has to be restricted to Rs. 5,000/-. That first respondent was a passenger in the bus is not disputed. The liability of the appellant has therefore to be restricted to Rs. 5,000/-.

4. The Tribunal has awarded advocate's fee as provided in the Civil Rules of Practice for Suits. It is urged on behalf of the appellant that the claim petition cannot be equated to an original suit and the advocate's fee payable in an original suit cannot be claimed by a claimant in a petition under the Motor Vehicles Act. It is also contended that the Claims Tribunal is not a court and the Civil Rules of Practice are not applicable to the Tribunal. This court in *United India Insurance Co. Ltd. Vs. Padmini Amma*, , had occasion to consider this aspect. The Claims Tribunal awarded costs including advocate's fee as provided for suit. The award to the extent it awards advocate's fee as provided for suit was challenged in an original petition before this court. One of us (Paripoornan, J.) who heard the petition held that the Motor Accidents Claims Tribunal is not a court and it is not a court subordinate to the High Court either. It was also held that the Rules regarding fees payable to advocates framed by the High Court relate to fees payable to legal practitioners in the High Court and in the subordinate courts only and so will not apply to Tribunals as such. It is observed that it is only by way of analogy and rule of guidance that the provisions of the said Rules are perhaps referred to and relied on broadly for the purpose of awarding the advocate's fee by the Tribunal. Petitioner therein had no case that the Rules regarding fees payable to advocates framed by the High Court are inapplicable. It was in these circumstances that this court held that the award of costs has not been shown to be totally unauthorised or unfair. The original petition was dismissed with the observation that it does not appear to be wholly illegal or unauthorised to merit interference under Article 226 of the Constitution of India. This court, therefore, refused to exercise the discretionary jurisdiction of this court under Article 226 to interfere with the award of costs in the claim petition before the Tribunal.

5. In the decision of this court in *United India Insurance Co. Ltd. Vs. Padmini Amma*, , the non-applicability of Rules regarding fees payable to advocates framed by the High Court was not canvassed. This court has observed that the reference was made to advocate's fee payable in suits in Civil Rules of Practice only by way of analogy and guidance and to fix the quantum and was not due to the reason that the said rule, ipso facto, applies to the award of fees by the Tribunal. The attack therein was made in an original petition filed under Article 226 of the Constitution of India. In the present case appellant has challenged the legality of the award of costs in appeal filed against the award. This court did not also consider the relevant provisions of the Motor Vehicles Act and the Civil Rules of Practice in order to determine the advocate's fee payable in a claim petition presented u/s 110-A of the Motor Vehicles Act. We have therefore to see whether a claim petition presented u/s 110-A of the Motor Vehicles Act has to be treated as an original suit or an application for the purpose of determining the advocate's fee payable.

6. The Claims Tribunal is constituted u/s 110 of the Motor Vehicles Act. Section 110-A enables a person to move the Tribunal by means of an application for compensation arising out of a motor accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damage to any property of a third party so arising or both. Section 110-B provides that the Claims Tribunal shall make an award after giving the parties an opportunity of being heard and hold an enquiry into the claim. What is contemplated under the provisions of the Act is only an application and not an original suit. Every such application shall be made in the form appended to the Kerala Motor Accidents Claims Tribunal Rules, 1977. The Claims Tribunal has to follow such summary procedure as it thinks fit subject to any rules that may be made in this behalf. Section 110-CC of the Act empowers the Tribunal to award interest in addition to the amount of compensation. The Act does not provide for the award of costs in a claim petition presented u/s 110-A of the Act. Section 110-CCC introduced by the amendment of 1969 provides that the Tribunal can award special costs by way of compensation in certain circumstances and the amount so awarded shall not exceed Rs. 1,000/-. No provision is seen made in the Rules also for awarding costs either to the appellant in the event of the petition being allowed or to the respondents in the event of the claim being rejected. Rule 20(1) of the Claims Tribunals Rules directs the Claims Tribunal while making an award to record concisely the findings on each of the issues framed, the reasons for such findings and the amount of compensation to be paid by the insurer or the owner in the case of vehicles which are not insured and also the person or persons to whom compensation shall be paid. This rule also is silent regarding the costs to be awarded to the parties or making any provision in the award regarding costs.

7. There is thus no provision either in the Motor Vehicles Act or in the Claims Tribunals Rules framed thereunder stipulating payment of costs. It is settled law that the Claims Tribunal is not a court and it is not a court subordinate to the High Court. The Civil Rules of Practice, 1971, cannot, therefore, be made

applicable to proceedings before the Claims Tribunal. The High Court of Kerala made the Civil Rules of Practice to regulate the procedure and practice in the subordinate civil courts in the State by virtue of the powers conferred by Section 122 of the Code of Civil Procedure. That section enables the High Court to make rules regulating their own procedure and procedure of the civil courts subject to their superintendence. Since the Claims Tribunal is not a court and since it is not a court subordinate to the High Court we hold that the rules made by the High Court in exercise of the powers conferred by Section 122 of the CPC are not applicable to petitions filed u/s 110-A of the Motor Vehicles Act.

8. The question then arises as to whether a successful claimant before the Motor Accidents Claims Tribunal can be awarded costs and if so, on what basis. Even the awarding of costs u/s 35 of the CPC is discretionary, but that discretion must be exercised on judicial principles and not arbitrarily. Similarly, the awarding of costs is in the discretion of the Tribunal. The general rule is that a successful party is entitled to get costs incurred by him unless he is guilty of misconduct or negligence or there is any other reason for disallowing costs. We find no reason why the general rule cannot be extended to claim petitions filed under the Motor Vehicles Act. We are therefore of the view that a successful party in a claim petition before the Tribunal has to be paid the costs incurred in the petition.

9. A successful claimant should be allowed the court fee paid by him. There may be instances where the claimant has to incur huge expenditure in summoning medical officers and medical experts to prove the nature of injuries and the disability caused. Some of them may have to be paid traveling expenses and daily allowance and if they are coming from distant places a considerable amount has to be spent in this connection. Such evidence is necessitated only to prove the claim and to enable the claimant to get adequate compensation due to the claimant. The Tribunal has therefore to award the expenses incurred for summoning witnesses and producing or causing production of documents.

10. The next aspect to be considered is whether a successful party can claim advocate's fee and if so, what is the basis. The claimant has to seek legal advice in instituting the proceeding and prosecuting the same. He has necessarily to incur expenses towards advocate's fee. Provision has therefore to be made in the award for the same. But as observed by this court in *United India Insurance Co. Ltd. Vs. Padmini Amma*, , the Civil Rules of Practice as such are not applicable to proceedings before the Claims Tribunal, but that can be safely referred to by way of analogy and may afford guidance in many cases to fix the quantum. This court in exercise of the powers under Articles 225 and 227 of the Constitution of India and with the previous approval of the Governor of Kerala has framed rules regarding the fees allowable to legal practitioners in the High Court and in the subordinate courts as per order No. B1-80/61/D1 dated 7.3.1969. Ad valorem fee is prescribed for original suits, which cannot, ipso facto, be made applicable to claim petitions, since they cannot be considered as original suits. The rules provide for payment of advocate's fee in various

categories of petitions. Rule 16 provides for payment of maximum advocate's fee of Rs. 250/- in other proceedings of an original nature not otherwise provided for in the Rules. It may be contended that guidance may be taken from Rule 16 and the maximum advocate's fee payable can be determined as Rs. 250/-. But it has to be noted that though the claim made before the Tribunal is by way of a petition, an elaborate enquiry has to be made by the Tribunal regarding the negligence of the driver, the nature of the injuries sustained by the claimant, the disability caused on account of the accident, the loss to the dependants in case the injured succumbs to the injuries and all incidental matters. Since the enquiry to be made is substantially in the nature of an original suit after framing issues, we are of the opinion that the advocate's fee fixed in Rule 16 of the Advocates Fee Rules cannot be taken as a guidance for determining advocate's fee payable in petitions before the Claims Tribunal. Till suitable Rules are framed in this connection, it is for the Tribunal itself to award a reasonable amount by way of advocate's fee after taking into account the amount of the claim, the nature of the contentions raised, the nature of the evidence adduced and other relevant factors. We hope that the Claims Tribunals will consider these aspects and then award a reasonable amount as advocate's fee.

11. In the present case the Tribunal has awarded an amount of Rs. 1,400/- as advocate's fee on a claim of Rs. 25,000/-. The amount awarded as fee appears to be exorbitant. Taking into account the amount of the claim and the nature of the contest, we feel that an amount of Rs. 500/- will be appropriate towards the advocate's fee.

12. The Tribunal has directed the claimant to deposit 95 per cent of the amount in fixed deposit with permission to withdraw the interest thereon every month. Neither the Act nor the Rules provide for such a course. The injured or the legal representatives of a person who died in a motor accident are entitled to get the entire compensation since the amount was due on the date of the accident. It is therefore not proper or justifiable to postpone payment to a future date. The amount is paid as compensation for the loss sustained by them and the payment should be an immediate payment and not a postponed payment. The direction of the Tribunal has therefore to be vacated.

Subject to the modifications indicated above, we dismiss the appeal and direct both parties to suffer their costs.