

(2011) 07 KL CK 0178
In the High Court Of Kerala
Case No : O.P. No. 2256 of 2011

Suma and Others

APPELLANT

Vs

Rajesh P.A and Others

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Citation : (2011) 3 KLJ 606 : (2011) 4 KLT 109 : (2011) 6 RCR(Civil) 721

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : Mathew John and Domson J. Vattakuzhy, for the Appellant;

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—Jijoy Sebastian, husband of the first petitioner, father of petitioners 2 and 3 and son of petitioners 4 and 5 died in a motor accident on 14.5.2011. The petitioners thereupon filed a claim petition in the Motor Accidents Claims Tribunal, Pala, claiming the sum of Rs. 40,00,000/- as compensation from the owner, the driver and the insurer of an autorickshaw, the negligent driving of which according to the petitioners resulted in the accident. On that claim petition the sum of Rs. 39,373/- was payable as court fee, computed in terms of rule 397 of the Kerala Motor Vehicles Rules, 1989. In the claim petition itself the petitioners had stated that they are not in a position to pay the court fee at present and that they are agreeable to have the court fee recovered from the compensation awarded by the Tribunal. They also filed I.A. No. 1174 of 2011 to exempt them from payment of court fee, wherein also they had stated that they do not have the means to pay the court fee. By Ext.P3 order passed on 8.6.2011 the Motor Accidents Claims Tribunal rejected the application for exemption from payment of court fee. The order reads as follows:- This petition is for exemption from payment of Court Fee. Not exempted.

Aggrieved by Ext.P3, the petitioners filed Ext.P4 petition seeking a review of the said order. By Ext.P5 order passed on 1.7.2011 the review petition was dismissed

holding that the petitioner has not produced evidence or records to substantiate her contention that she is a pauper. Hence this writ petition challenging Exts.P3 and P5 orders. The main contention raised by the petitioners is that the Motor Accidents Claims Tribunal erred in rejecting the application for exemption from payment of court fee on the ground that the petitioners have not proved that they are indigent persons. It is contended that an enquiry in terms of Order XXXIII of the CPC is not required to be conducted when a claimant seeks exemption from payment of court fee in view of the stipulations contained in the first proviso to sub-rule (2) of rule 397 of the Kerala Motor Vehicles Rules. 2. A learned single Judge of the Madras High Court considered a similar question in *T. Kanchana Devi Vs. R.D. Mani, The Oriental Insurance Co. Ltd. and T.N.S.T.C.,* . Rule 24(3) of the Tamil Nadu Motor Accidents Claims Tribunal Rules, 1989, empowered the Claims Tribunal in its discretion to exempt any party from payment of the court fee prescribed under sub-rule (1) thereof. In the first proviso to sub- rule (2) of rule 24 of the Tamil Nadu Motor Vehicles Accidents Claims Tribunal Rules, 1989, it is stipulated that where a claim of a party has been accepted by the Claims Tribunal, the party shall have to pay the prescribed fees, exemption in respect of which had been granted initially, before a copy of the judgment is obtained. Interpreting the said provisions, a learned single Judge of the Madras High Court held that an application seeking exemption from payment of court fee is not similar to an application claiming dispensation of court fee or an application for leave to sue as an indigent person. It was held that there is no need to conduct a roving enquiry as provided under the CPC and that if the claimant satisfies the Tribunal that he is not in a position to pay the required court fee, it may, in its discretion, exempt him from payment of the court fee. The learned Judge also took note of the fact that by virtue of the proviso to sub-rule (2) of rule 24, in the event of the claimant succeeding, he will not be entitled to get a copy of the judgment unless the court fee payable is paid.

3. The stipulation in rule 397 of the Kerala Motor Vehicles Rules is however, different. The said rule reads as follows: -

397. Fees. -- (1) Every application under sub-section (1) of Section 166 of the Act, for payment of compensation shall be accompanied by a fee of rupee one in the form of Court Fee Stamp, if the claim in a case of accident is confined to special damages and if any further general damages, are claimed, an advalorem fee shall be charged on the aggregate of the special and general damages claimed on the following scales, namely:-

(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.

(3) The fee for an appeal shall be rupees one hundred.

4. A learned single Judge of this Court considered the scope of sub-rule (2) of rule 397 in W.P(C) No. 17992 of 2005. In that case the court fee payable was Rs. 622.50 on a claim for Rs. 1,25,000/-. The application filed by the claimant for exemption from payment of court fee was disallowed and the claimant was directed to pay the court fee. Interfering with the said order, a learned single Judge of this Court held that under rule 397(2) of the Kerala Motor Vehicles Rules, only exemption from payment of court fee is provided and there is no dispensation of the court fee payable. Following the decision of the Madras High Court in T. Kanchana Devi v. R.D. Mani, (supra) the learned single Judge held that as a roving enquiry as provided under the CPC is not called for and the court fee which the claimant should have paid can be realised from the compensation awarded in view of the stipulation in the rules that the claimant will be paid only such amount available after deducting the court fee, the Tribunal ought to have allowed the application. In the instant case, the claim is for the sum of Rs. 40,00,000/-. The court fee payable is Rs. 39,373/-. The deceased was employed as a teacher in a high school and was aged 35 years at the time of his death. The claimants including his wife and two minor children, aged 6= years and 4 years respectively, have stated they were dependent on him for their livelihood and that the death of the bread winner of the family has caused financial crisis. The first petitioner had in the affidavit filed by her in support of I.A. No. 1174 of 2011, which was rejected by Ext.P3 order, averred that the claimants are unable to raise the amount payable towards court fee as the claimants are not employed and do not own any property which yields sufficient income. She had in the affidavit filed in support of I.A. No. 1399 of 2011, which was rejected by Ext.P5 order, stated that she is unemployed and that she and the other claimants have no means to pay the court fee of Rs. 39,373/-. The claimants have in the claim petition stated that they are willing to have the court fee recovered from the compensation awarded to them. A reading of Ext.P5 order discloses that the Motor Accidents Claims Tribunal had treated I.A. No. 1174 of 2011 as an application for leave to sue as an indigent person and had applied the principles governing such an application while considering I.A. No. 1174 of 2011 and I.A. No. 1399 of 2011. In view of the proviso to sub-rule (2) of rule 397 of the Kerala Motor Vehicles Rules, which stipulates that when the claimant succeeds and an award is made in his favour and the compensation amount is deposited, the claimant will be entitled only to such amount available after deducting the court fee which should have been paid by the claimant had he not been exempted from payment of court fee, I am of the opinion that the Motor Accidents Claims Tribunal ought to have exercised the discretion in favour of the petitioners and exempted them from payment of the court fee.

I accordingly allow the writ petition, quash Exts.P3 and P5 and exempt the petitioners from paying the court fee. Needless to say, in the event of an award being passed in favour of the petitioners, they will be entitled only to the amount available after deducting the court fee which they should have paid had they not

been exempted under sub-rule (2) of rule 397 of the Kerala Motor Vehicles Rules from paying the court fee.