

(2003) 03 MAD CK 0151

In the Madras High Court

Case No : Civil Revision Petition (P.D) No. 817 of 2001

T. Kanchana Devi

APPELLANT

Vs

R.D. Mani, The Oriental Insurance Co. Ltd. and T.N.S.T.C.

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) ACJ 1844 : (2003) 2 MLJ 42

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K.S. Jayaganeshan, for the Appellant; K.S. Sundar, For 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Claimant in unnumbered M.C.O.P. of 2000 on the file of the Motor Accident Claims Tribunal, Cuddalore, aggrieved by the order in I.A. No. 1323 of 2000 dated 2-8-2000, dismissing her petition filed u/s 166(1) of Motor Vehicles Act, 1988 read with Rule 24 (3) of Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 to exempt from paying court-fee of Rs. 99,371-50, has filed the above Revision under Article 227 of the Constitution of India.

2. It is seen that in respect of death of one Thirunavukkarasan in a motor vehicle accident that took place on 10-4-2000, his wife, minor children, and parents have prayed for a compensation of Rs. 1,00,00,000/- had filed a petition before the Motor Accident Claims Tribunal at Cuddalore. Along with the said petition, the claimants filed a petition u/s 166(1) of the Motor Vehicles Act, 1988 read with Rule 24 (3) of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 and u/s 151 of the CPC praying for an order for exemption from paying court-fee of Rs. 99,371-50. Since the Tribunal dismissed the said petition, the first claimant, widow of the deceased preferred the above Revision.

3. Heard the learned counsel for the petitioner as well as respondents.

4. The only point for consideration in this Revision is whether the petitioner has made out a case for granting exemption from payment of court-fee in respect of her claim for compensation?

5. Before the Court below, the widow of the deceased has filed an affidavit stating that her husband met with a road accident on 10-4-2000 and died on the spot due to fatal injuries. The wife, two children and parents have prayed for a compensation of Rs. One crore, for which as per the Rules, they have to affix a court fee of Rs. 99,371-50. It is further stated that though her husband during his life time was earning a sizeable income of not less than Rs. 25,000/- per month and that the claimants are entitled compensation not less than Rs. One crore, they are not in a position to pay the prescribed court-fee for the same. The petitioner also stated that she is not disposed of any property fraudulently within two months before the presentation of the application for exemption from payment of court-fee, nor entered into any type of agreement with any third parties regarding the subject of the claim petition. The learned Tribunal, after holding that since the petitioners therein have not produced any evidence to prove that they are not in a position to pay court-fee and they are poor or indigent persons not able to pay court-fee, dismissed the said petition. As per Rule 24 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 (hereinafter referred to as "the Rules"), every application under sub-section (1) of Section 166 of the Motor Vehicles Act for payment of compensation shall be accompanied by a fee of Re. 1/- in the form of court fee stamp, if the claim in a case of accident is confined to special damage is and if any further general damage is claimed, an advalorem fee shall be charged on the aggregate of the special and general damage claims on the scale provided under the Table given in the Rules. However, sub-rule (3) of Rule 24 of the Rules enables the Claims Tribunal in its discretion to exempt any party from the payment of fees prescribed under sub-rule (1). As per the first proviso to sub-rule (3), 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 has been granted initially before a copy of the judgment is obtained. A reading of the above provisions shows that the Claims Tribunal has the discretion to exempt any party from the payment of court fee. This is not similar to an application filed claiming dispensation of court fee and pursue the suit as indigent person or inform pauperis. In other words, there is no need to conduct a roving enquiry as provided under the CPC and if the Tribunal satisfies that the party is not in a position to pay the required court fee, it may in its discretion exempt him from payment of the same; accordingly the conclusion of the Tribunal that the petitioners/claimants have not proved that they are poor or indigent persons and not able to pay court fee cannot be accepted. On a careful reading of the averment of the petitioner/widow of the deceased in her affidavit filed in support of the above application as well as the averments in the application filed u/s 166(1)(c) of the Motor Vehicles Act, 1988 shows that though the deceased was earning sizeable income of not less than Rs. 25,000/- to Rs. 35,000/- per month,

the claimants, particularly the first claimant-widow of the deceased was not possessed solid cash to enable her to pay the required court fee. It is to be noted that the other claimants namely claimants 2 and 3 are minors and claimants 4 and 5 are aged parents. Taking note of all the above aspects and in the light of the enabling provision, namely, sub-rule (3) of Rule 24 of the Rules and also the safe guard provided under the first proviso therein that in the event of getting an award, without payment of court fee, copy of the judgment will not be provided, I am of the view that ends of justice would be met by granting exemption from payment of court fee of Rs. 99,371-50 due on the claim petition filed by the petitioner/1st claimant and other claimants for a Claim of Rs. One crore. It is made clear that as per the first Proviso to sub-rule (3) of Rule 24 of the Rules, in the event of getting an award, the claimants should pay the prescribed fees before a copy of the judgment is obtained. In this view of the matter, the impugned order of the Tribunal dated 2-8-2000 made in I.A. No. 1323 of 2000 is set aside. The Tribunal is directed to number the claim petition if the same is otherwise in order and dispose of the same expeditiously. Civil Revision Petition is allowed. No costs.