
(1986) 03 KL CK 0002
In the High Court Of Kerala
Case No : O. P. No. 1662 of 1986

United India Insurance Co.

APPELLANT

Vs

Padmini Amma

RESPONDENT

Date of Decision : 31-03-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) 23 KLJ 477

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : Siby Mathew and A.A. Mohammed Nazir, for the Appellant; P. Vijayabhanu, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The petitioner, Insurance Company, was the third respondent in MAC No. 43 of 1982 on the file of the fourth respondent-Tribunal. The claim was filed by respondents I to 3 herein, who are legal heirs of deceased Bhaskaran Nair, who met with an accident on 11-10-1981. Respondents 1 to 3, wife and children of the deceased, claimed a compensation of Rs. 1,50,000/-. The 4th respondent by Ext. P1 judgment dated 13-12-1985, awarded the entire sum claimed with interest at the rate of 12% per annum from 24-2-1982 till the date of payment and costs including advocate's fee as provided for suits. In this Original Petition, the attack is against Ext. P1 to the extent it awards advocate's fee as provided for suits. The petitioner states that this portion of the award cannot be challenged under Sec. HOD read with Sec. 96 (2) of the Motor Vehicles Act and so this O. P. is filed challenging Ext. P1 to the extent it awards costs including advocate's fee as provided for suits. The petitioner contends that only Rule 16 of the Rules regarding fees payable to advocates will apply. Rule 16 governs all proceedings as not otherwise provided for. I heard counsel for the petitioner, Mr. Siby Mathew. The main argument advanced was that it is rule 16 of the Rules, regarding fees payable to advocates that will apply to the instant

case and not rule 6 which governs fees payable for suits for money. It should be noted that the petitioner has no case that the rule regarding fees payable to advocates framed by the High Court dated 7-3-1969 is inapplicable. The only question raised is, that it is not rule 6 that applies, but only rule 16 thereof, (Paras 2, 3 and 5 of the Grounds in the O. P.) As stated, rule 6 governs "suits for money". Rule 16 governs the fee, in other proceeding of an original nature, not otherwise provided for. The Motor Accidents Claims Tribunal is not a "Court" and it is not a Court subordinate to the High Court either. (See - Beeran v. Rajappan) 1980 KLT 210 (DB). The Rules Regarding Fees payable to Advocates framed by the High Court as per B1-80/61/D1 dated 7-3-1969 related to fees payable to legal practitioners in the High Court and in the Subordinate Court only and so will not apply to Tribunals, as such. It is only by way of analogy and rule of guidance the provisions of the said Rules are perhaps referred to and relied on broadly for the purpose of awarding Advocate's fee by the Tribunals. It is not, as if, the said Rules are binding for awarding the fees in proceedings before Tribunals. It should be remembered that the award of costs is fully discretionary. It means, allowances, a succeeding party is entitled to get from the losing party to reimburse himself for expenses incurred in defending the proceedings. The power to award costs is incidental and ancillary to the proceedings. The award of costs does not depend upon as to who is the victim. The expression of opinion by the trial judge and his adjustment on the equity and on the conduct of the parties during litigation and a host of other intangible matters, play a large part in coming to a conclusion regarding the award of costs. As stated, the award of costs is completely discretionary. It is no doubt a judicial discretion. Exercise of such discretionary power is not ordinarily open to review in proceedings under Article 226 of the Constitution, unless it is shown that the exercise of discretion is perverse or arbitrary or that no reasonable man would have awarded, the costs decreed. The 4th respondent-Tribunal has categorically held that respondents 1 to 3 herein are entitled to Advocate's fee as provided for suits in the Civil Rules of Practice. 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 reasons that the said rule, ipso facto applies to the award of fees by the Tribunal. In such circumstances, I am unable to say that the 4th respondent has exercised the discretion either arbitrarily or capriciously or vindictively or has not applied its mind. The award of costs by the 4th respondent in Ext. P1 has not been shown to be totally unauthorised or unfair or has caused any injustice. The costs have been awarded only to the legal heirs of the deceased, who met with a fatal accident and in the circumstances it does not appear to be wholly illegal or unauthorised to merit interference under Article 226 of the Constitution of India.

2. In the circumstances of the case, I do not think that the circumstances disclosed in this case warrant the exercise of the discretionary jurisdiction of this court under Article 226 of the Constitution to interfere with the award of costs in Ext. P1 proceedings. There is no merit in this O P. It is dismissed in limine.