
(1986) 03 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 1662 of 1986

United India Insurance Co. Ltd.

APPELLANT

Vs

Padmini Amma

RESPONDENT

Date of Decision : 31-03-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Advocates Fees Rules, 1969 — Rule 16, 6
Motor Vehicles Act, 1939 — Section 110

Citation : (1986) 2 ACC 138 : (1986) ACJ 1036 : (1987) 61 CompCas 222

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

Bench : Single Bench

Advocate : Siby Mathew, A.A. Mohammed Nazir and P. Vijaya Bhanu, for the Appellant;

Final Decision : Dismissed

Judgement

Paripoornan, J.—The petitioner, insurance company, was the third respondent in MAC No. 43 of 1985 on the file of the fourth respondent-Tribunal. The claim was filed by respondents Nos. 1 to 3 herein, who are legal heirs of deceased, Bhaskaran Nair, who met with an accident on October 11, 1981. Respondents Nos. 1 to 3, wife and children of the deceased, claimed a compensation of Rs. 1,50,000. The fourth respondent by exhibit P-1 judgment dated December 13, 1985, awarded the entire sum claimed with interest at the rate of 12 per cent, per annum from February 24, 1982, till the date of payment and costs including advocate's fee as provided for suits. In this original petition, the attack is against exhibit P-1 to the extent it awards advocate's fee as provided for suits. The petitioner states that this portion of the award cannot be challenged u/s 110D read with Section 96(2) of the Motor Vehicles Act and so this original petition is filed challenging exhibit P-1 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 for.

2. 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 rules regarding fees payable to advocates framed by the High Court dated March 7, 1969, are 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 original petition). As stated, Rule 6 governs "suits for money". Rule 16 governs the fee, in other proceedings 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 . The rules regarding fees payable to advocates framed by the High Court as per B-1-80/61/D-I dated March 7, 1969, relates 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 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 victor and 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 the litigation and a host of other intangible matters, plays 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 fourth respondent-Tribunal has categorically held that respondents Nos. 1 to 3 herein are entitled to advocate's fees 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 reason, 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 fourth respondent has exercised the discretion either arbitrarily or capriciously or vindictively or has not applied its mind. The award of costs by the respondent in exhibit P-1 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.

3. In the circumstances of the case, I do not think that the circumstances

disclosed in the 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 exhibit P-1 proceedings. There is no merit in this original petition. It is dismissed in limine.

4. Issue carbon copy of this judgment to counsel for the petitioner on usual terms.