
(2000) 10 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.A. No. 645 of 1995

Ushma Gupta and Others

APPELLANT

Vs

Bhagwanti Bai and Others

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Court Fees Act, 1870 — Section 35
Motor Vehicles Act, 1988 — Section 173, 176

Citation : (2002) ACJ 1908

Hon'ble Judges : Shambhoo Singh, J; R.D. Vyas, J

Bench : Division Bench

Advocate : Ajay Mishra, for the Appellant; S.S. Swamy, for the Respondent

Judgement

Shambhoo Singh, J.—With great respect, I am unable to agree with the order prepared by my learned brother.

2. One Ashok Gupta, who was Asstt. Engineer in Irrigation Department of U.P. Government receiving salary of Rs. 5,400 per month with facilities of quarter, vehicle, servants and phone, died in a motor accident on 10.11.1992. His widow Ushma Gupta and parents filed claim application on 3.1.1994 and claimed compensation of Rs. 35,00,000. The VIII M.A.C.T., Indore awarded compensation of Rs. 26,75,550 vide award dated 25.7.1994. The claimants filed this appeal on 19.10.1995 for enhancement of compensation amount. This appeal was valued at Rs. 35,00,000. The appellants had affixed court-fee stamps of Rs. 9 only.

3. My respected brother directed the appellants to affix court-fee on the claim value, i.e., Rs. 35,00,000. In my humble opinion, the appellants cannot be ordered to pay court-fee on the value of the appeal. The appeals preferred against the awards passed in claim cases under Motor Vehicles Act are not covered under Schedule I as the awards passed under Motor Vehicles Act by Motor Accidents Claims Tribunal are not decree or order under Civil Procedure Code, even though, they may be final decisions and may have all the incidents of a decree. The amount of compensation granted by Motor Accidents Claims

Tribunal is recoverable as an amount awarded by decree also and the M.A.C.T. have been invested with powers of civil court, but that would not make the award an order having force of law and, therefore, court-fee upon the memorandum of appeal preferred against the award, would be payable under Schedule II, Article 11, Court-Fees Act. It gets further strength from the provisions of Motor Vehicles Rules, 1974 framed by State of Madhya Pradesh under the powers conferred by Section 111A, etc., of the Motor Vehicles Act, 1939. Rule 278 and Rule 298 provided that the application presented to the M.A.C.T. for award of compensation and memorandum of appeal, filed in High Court shall bear court-fee stamps of the prescribed value and under Rule 23, M.P. Motor Vehicles (Payment of Fees) Rules, 1974 made by State Government under powers conferred by Section 111-A (new 176) Motor Vehicles Act provided that the application for compensation shall be affixed with court-fee stamps of the value of fifteen rupees. The same provision has been made in Rule 222, Motor Vehicles Rules, 1994 made u/s 176, Motor Vehicles Act, 1988. Rule 242 which pertains to appeal, is silent about the court-fee, payable on memorandum of appeal. The reason is obvious, as Schedule II, Article 11, Court-Fees Act applies to the appeals preferred against the award passed by M.A.C.T., therefore, no separate provision for payment of court-fee has been made in these Rules. Under Schedule II, Article 11 fixed court-fees is payable on the claim application, there cannot be a provision for payment of court-fee on ad valorem basis on the memorandum of appeal as appeal is continuation of suit. This is the reason, why the appeals preferred u/s 173, Motor Vehicles Act are registered as misc. appeals and not as first appeals under M.P. High Court Rules.

4. As the provisions of Motor Vehicles Rules and the Court-Fees Act provide for payment of fixed court-fee on memorandum of appeal, filed under Motor Vehicles Act, in my opinion, direction for payment of court-fee on the valuation of appeal cannot be given. This order would be against the statutory provisions.

5. I also find myself unable to agree with the directions of my learned brother that there should be court-fees as in other States. It has not been shown as to what court-fee is payable on appeal in other States. But if there are provisions, in other States, which require payment of court-fee on the value of the appeal, I will not agree for making similar provisions in the State of Madhya Pradesh. Madhya Pradesh is a poor State. Generally, the victims of the accidents in India and specially in Madhya Pradesh, are the poor people who go on foot on the roads. It is well-known that the accident claim cases are result of social welfare legislation to provide social security to the citizens. The provision of award of compensation to the heirs of the deceased and to the injured persons is benevolent provision of law and it has been made keeping in view the humanitarian grounds and the increasing number of accidents. In my opinion, if provision is made for levy of court-fee on the basis of ad valorem, poor people would not be in a position to file claim cases and prefer appeals and it will frustrate the very object of this Act. I am unable to restrain myself to say that to get justice, is a birth right of a citizen and it may be said that levy of court-fee is

a tax on entry in the temple of justice and it has the effect of restricting the entry. Some have called it selling of justice. In view of above, if it does not appear possible to abolish levy of court-fee, thoughtful consideration may be given about its reduction much less rationalization. Be that as it may, it is the domain of legislature and we leave it to the wisdom of the legislature.

The State of Madhya Pradesh took steps in this regard and in the year 1976 enacted Madhya Pradesh Samaj Ke Kamjor Vargon Ke Liye Vidhik Sahayata Tatha Vidhik Salah Adhinyam, 1976, with a view to bring the system of justice within the reach of the weaker sections of the people. It further issued Notification F. No. 9-1-83B dated 1.4.1983 under powers conferred u/s 35 of the Court-Fees Act and reduced to the extent of fifty per cent, the court-fees payable on plaint by agriculturists residing in drought affected villages and by other notification, on the same date, exempted certain categories of persons from paying court-fees payable on plaint. Parliament also enacted Legal Services Authorities Act, 1987 and made provisions u/s 21 for return of court-fee in the cases in which compromise or settlement was arrived at in Lok Adalat. It shows that legislature has started taking steps in this regard and a day may come when court-fees may be abolished completely.

6. In view of above, in my opinion, court-fees should not be made payable on the value of the appeal preferred u/s 173 of the Motor Vehicles Act, 1988. Office may verify whether proper court-fee has been paid.