



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Friday, the Tenth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

WEB COPY

CMP(MD) No.10013 of 2017
IN
CMA(MD) No.SR38438 of 2017

1 SUBHA
2 MINOR MANIKANDAN
(MINOR REP BY HIS MOTHER/
GUARDIAN OF 1ST APPELLANT) ... PETITIONERS/APPELLANTS

Vs

1 JOSH T.KURIYAKOH,
2 THE BRANCH MANAGER
UNITED INDIA INS.CO.LTD.,
NO.48/5, J.P.COMPLEX, MAHALAKSHMI THEATER OPP.,
THANJAVUR MAIN ROAD,
PABHANASAM-614 205.

3 RENGARAJ
4 VASANTHA
(RESPONDENTS 3&4 NOT NECESSARY
PARTIES AND HENCE NOTICE MAY
BE DISPENSE WITH) ... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant temporary exemption from remitting the payment of the balance court fees of Rs.3000/- under Rule 24 clause 3 of the Tamil Nadu Motor Vehicles Claims Rules after deducting the court fee of Rs.372.50.

PRAYER IN CMA(MD)SR38438/2017 :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, praying to enhance the award of compension passed in Judgment and Decree dated 23.11.2016 made in M.C.O.P.No.572/2014 on the file of Motor Accident Claims Tribunal/Principal District Judge, Pudukkottai and allow this Civil Miscellaneous Appeal with interest and cost.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon



hearing the arguments of M/S.R.DEVARAJ, Advocate for the petitioner the court made the following order:-

The appellants are the claimants in M.C.O.P.No.572 of 2014 on the file of the Principal District Court, Pudukottai. The Tribunal awarded a sum of Rs.14,66,100/- with interest by award dated 23.11.2016. The appellants want a further sum of Rs.4 lakhs over and above what was awarded by the Tribunal. For filing this appeal, a sum of Rs.3,372.50/- will have to be paid. The appellants have paid a sum of Rs.372.50/- only. They have filed C.M.P.(MD) No.10013 of 2017 in C.M.A(MD) No.SR 38438 of 2017 praying for grant of temporary exemption from remitting the balance fee of Rs.3,000/-.

2.This petition has been filed under Rule 24(3) of Tamil Nadu Motor Vehicles Accidents Claims Tribunal Rules, 1989. When the matter was taken up for hearing, I posed a question as to whether the said petition is maintainable. Quite a few members of the Bar particularly Thiru.K.K.Ramakrishnan, Advocate took the stand that such a petition is very much maintainable and that this Court in a quite few cases granted such exemption. After all, there is not going to be a waiver as such. The effect of the order will only be a deferred remittance.

3.The learned counsel for the petitioner/appellant placed reliance on the order dated 04.12.2002 made in C.M.P.No.17688 of 2002 in CMA SR.No.65160 of 2002 and the order dated 19.06.2009 made in M.P.(MD) No.1 of 2008 in CMA(MD) No.SR 10295 of 2008. The first order was rendered by a Division Bench while the second order was by a learned Single Judge of this Court. The learned Single Judge while ordering the said M.P.(MD) No.1 of 2008 observed as follows:

"The petitioner relied upon Rule 24 Clause 3 of the Tamil Nadu Motor Vehicle Claims Tribunal Act and sought for exemption from paying the said Court fee. He has also relied upon the Division Bench judgment of this Court passed in C.M.P.No.1788 of 2002 in which the Hon'ble Division Bench allowed the petition and directed to file the appeal without payment of the requisite Court fee subject to condition that she shall pay the Court fee after the disposal of the appeal. In view of the judgment and also the Rule 24(3) of the Tamil Nadu Motor Vehicle Accidents Claims Tribunal Act, 1989, the petition is ordered."

4.The learned counsel for appellant would contend that the provisions relating to award of compensation in the Motor Vehicle Accidents Claims Tribunal Act, 1988 are beneficial in nature. Therefore, this Court must adopt a liberal approach. He would contend that



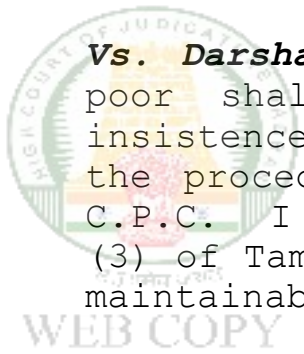
Rule 24(3) of the said Rules empowers the Claims Tribunal to grant exemption to any party from payment of fees. Since an appeal is a continuation of the original proceedings, this Court should also be construed as an appellate Tribunal and consequently possess the power to grant such an exemption.

5. Rule 24(1) talks about payment of fee before the Claims Tribunal. Rule 24(1-A) pertains to payment of fee in an appeal filed under Section 173 of the Act. Rule 24(3) confers power on the claims Tribunal to grant exemption from payment of fee. It is thus clear that on a plain reading of the said rule that power to grant exemption from payment of fee is only in respect of what has been prescribed under sub Rule (1) of Rule 24. Rule 24(3) does not make any reference to the fee prescribed under Rule 24(1-A). I therefore have no doubt in my mind that the power of the High Court to grant exemption from payment of fee cannot be traced to Rule 24(3). I am also not in a position to accept the submission of the learned counsel for the appellant that the appeal being a continuation of the original proceedings, this Court should be construed as Tribunal for the purpose of granting exemption from payment of fee.

6. The issue as to whether High Court can be construed as a Tribunal when exercising its appellate jurisdiction was settled long ago. A Division Bench of this Court in the decision reported in **AIR 1985 Madras 264 - R. Govindarajulu V. S. Dharman** held that while hearing an appeal under the Act, the higher Court exercises its ordinary appellate powers and should follow its practice and procedure as are normally attributable to it as an ordinary appellate Court. It was also held that it would be open to the appellants to invoke the aid of Order 44 and thereby Order 33 of the Code of Civil Procedure while dealing with appeals filed by independent persons. It was further observed that this Court is not constituted as a special Tribunal while hearing the appeals under the Motor Vehicles Act. Though the said decision was rendered in the context of the Motor Vehicles Act, 1939, the very same reasoning would apply in the case of appeals filed under Section 173 of Motor Vehicles Act, 1988 also.

7. In an yet another Division Bench decision reported in **1980 TNLJ 515 - Poongavanam and another Vs. Pallavan Transport Corporation**, it was held that an appellant while filing an appeal against the award of the Tamil Nadu Motor Accidents Claims Tribunal cannot invoke sub-Rule 2 of Rule 20, which is parimateria with the present Rule 24(3).

8. It is not as if the appellant is remediless. As eloquently observed by Justice Krishna Iyer in **State of Haryana**



Vs. Darshana Devi reported in AIR 1979 Supreme Court 855, the poor shall not be prised out of the justice market by insistence on court-fee. But, the appellants have to follow the procedures set out under Order 44 read with Order 33 of C.P.C. I therefore hold that the petition filed under Rule 24 (3) of Tamil Nadu Motor Accidents Claims Tribunal Rules is not maintainable.

9.The learned counsel for the appellant would submit that this Court can very well invoke its inherent powers available under Section 151 of C.P.C. When an express provision is set out under Order 44 of C.P.C., this Court must necessarily take recourse to the same and not fall back on its inherent powers. I therefore dismiss this petition as not maintainable. No costs. I place on record my appreciation of the assistance rendered by Mr.K.K.Ramakrishnan, Advocate.

10.The learned counsel for the appellant states that he may be given three weeks time to remit the deficit Court fee. The time prayed for is granted.

sd/-
10/11/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO
THE PRINCIPAL DISTRICT JUDGE,
MOTOR ACCIDENT CLAIMS TRIBUNAL,
PUDUKKOTTAI

+1. C.C. to M/S.R.DEVARAJ Advocate SR.No.34302

ORDER
IN
CMP(MD) No.10013 of 2017
IN
CMA(MD) No.SR38438 of 2017
Date :10/11/2017

Arul
SH:CM:SAR-3:16.11.2017-4P-3C