



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

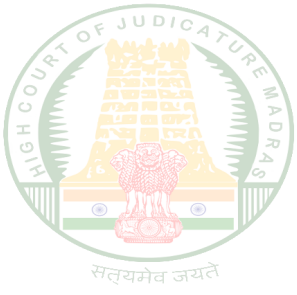
Reserved on : 04.04.2022

Delivered on : 05.05.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.P.No.4119 of 2022 in C.M.A.(SR).No.19930 of 2022,
C.M.P.No.3911 of 2022 in C.M.A.(SR).No.21838 of 2022,
C.M.P.No.3981 of 2022 in C.M.A.(SR).No.20922 of 2022,
C.M.P.No.4125 of 2022 in C.M.A.(SR).No.119005 of 2021,
C.M.P.No.4159 of 2022 in C.M.A.(SR).No.19989 of 2022,
C.M.P.No.4256 of 2022 in C.M.A.(SR).No.19998 of 2022,
C.M.P.No.4257 of 2022 in C.M.A.(SR).No.21552 of 2022,
C.M.P.No.4264 of 2022 in C.M.A.(SR).No.20551 of 2022,
C.M.P.No.4301 of 2022 in C.M.A.(SR).No.20017 of 2022,
C.M.P.No.4327 of 2022 in C.M.A.(SR).No.19814 of 2022,
C.M.P.No.4373 of 2022 in C.M.A.(SR).No.118942 of 2021,
C.M.P.No.4422 of 2022 in C.M.A.(SR).No.19737 of 2022,
C.M.P.No.4559 of 2022 in C.M.A.(SR).No.100901 of 2021,
C.M.P.No.4857 of 2022 in C.M.A.(SR).No.19703 of 2022,
C.M.P.No.4880 of 2022 in C.M.A.(SR).No.19728 of 2022,
C.M.P.No.4949 of 2022 in C.M.A.(SR).No.38076 of 2015,
C.M.P.No.5236 of 2022 in C.M.A.(SR).No.27150 of 2022
&
C.M.P.No.5709 of 2022 in C.M.A.(SR).No.8620 of 2022



C.M.P.No.4119 of 2022 Etc., batch

WEB CO **C.M.P.No.4119 of 2022:**

1.Thirumalai

2.Thamizharasi

...Petitioners

Vs

1.Philips

2.Divisional Manager,
The New India Assurance Company Limited,
CSI Building, 2nd Floor, No.1, Officers Lane,
Near Ooris College, Vellore – 1.

...Respondents

PRAYER: Civil Miscellaneous Petition is filed under Section 151 of the CPC to order exemption of Court fee for a sum of Rs.6,000/- in the above CMA.

For Petitioner : Ms.A.Subadra (CMP/4119/2022)

Mr.Sharath Chandran
Amicus Curiae

Mr.N.Manoharan
Representing the Bar

Mr.Edwin Prabhakar
Special Government Pleader



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

COMMON ORDER

This Court had invited the appellants in all these appeals, the members of the Bar, the learned Special Government Pleader to make their submissions on the two issues that had been raised by the Court, which are as follows:

“(1)Whether the provisions of Rule 24 would apply to Appeals under Section 173 of the Motor Vehicles Act without giving proof of the indigent circumstances.

“(2)Whether the petitioners/claimants who have obtained exemption can withdraw the amounts deposited without paying the Court Fees.”

2. Mr.Sharath Chandran had been appointed as Amicus Curiae to assist the Court by order 16.03.2022.



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

3. The CMPs now placed for the consideration of the Court seek orders exempting the Appellants from paying the Court fees payable towards the Appeal filed under Section 173 of the Motor Vehicles Act, 1988. The reasons given in these petitions are briefly reproduced herein below.

Contents of the affidavits citing reasons for an exemption:

4. The submission of the claimants while seeking an exemption of court fee is generally that the deceased or the injured was the breadwinner of the family and that after their death or injury, the family had been put to great hardship to lead their daily life. Additionally, financial crisis due to the Covid-19 pandemic has also been stated in order to obtain the exemption from paying the requisite court fee. Even in cases where the deceased is survived by an earning member of the family, it is pleaded that any money earned by such persons is very

4/52



C.M.P.No.4119 of 2022 Etc., batch

सत्यमेव जयते
WEB COPY

little and insufficient to meet family expenses. The submission that the deceased is the only breadwinner of the family has been made even in a case where the deceased was the mother of a 38-year-old male claimant. In a case where the injured is a minor girl, exemption is sought on the ground that the father of the minor girl had to spend a lot of money on the medical expenses for the daughter and hence had no money left to pay the requisite court fee.

5. In one of the cases where the claimant is the 70-year-old wife of the deceased, it has been submitted that the claimant has no money to pay court fee as her only son had become very sick and that with no one to support her financially, she has been relying on the support of her neighbors for sustenance. In all other cases, it generally stated that the claimants having been dependent upon the income of the deceased and that they are in a financially unstable condition and are hence, not in a position to pay the requisite court fee. In the case where the claim



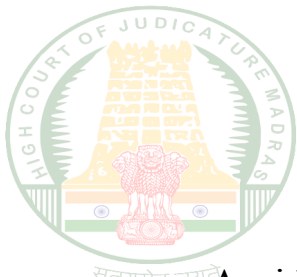
C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

arises out of an injury, expenses incurred as a result of medical expenses is generally referred to in order to obtain an exemption. Hence, in all affidavits for an exemption from court fee, it is concluded that the claimants will be put to great prejudice, irreparable loss and mental agony if they are not exempted from paying the requisite court fee but on the other hand, no prejudice would be caused to the Respondents.

Submissions:

6. On the side of the appellants only Ms.Subadra had addressed arguments. Mr.Ishtaq Ahmed who was the only other counsel who argued had only submitted that the petitioner was really in dire straits and has also not received any portion of the award. Ms.Subadra had addressed arguments by contending that Sub Rule 3 of Rule 24 has to be extended to appeals as well. She would submit that there is a proposal to amend Rule 24 of the Tamil Nadu Motor Vehicles



C.M.P.No.4119 of 2022 Etc., batch

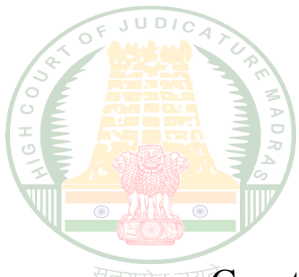
WEB COPY

Accidents Claims Tribunal Rules, whereby Rule 24 was sought to be substituted.

7. The learned counsel has relied upon the draft amendment proposed by the Tamil Nadu Government to Rule 24, where it has been proposed to suo motu grant an exemption from payment of Court fees. It is contemplated that the Court fee would be paid by the respondent once the award is passed by calculating the Court fee payable on the award amount. This amount is directed to be kept in Court account. However, this amendment has not come into force. She would therefore contend that exemption of Court fees as provided in Rule 24 (3) automatically enures to appeals as well.

8. Mr.Sharath Chandran, Amicus Curiae would bring to the notice of the Court that the Tamil Nadu Motor Accident Claims Rules was first framed in 1961. Rule 20 therein dealt with the payment of

7/52

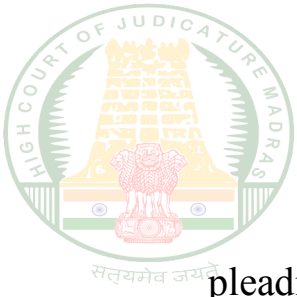


C.M.P.No.4119 of 2022 Etc., batch

सत्यमेव जयते
WEB COPY

Court fees. This Rule according to him is in pari materia to the provisions of Rule 24 of 1989 amendment. Both the Rules provide for exemption only before the claims tribunal and not with reference to exemptions of Court fees in the appeal under Section 173 of the Motor Vehicles Act. He would submit that the 1st issue which is now raised by the Court is no longer res integra. The issues has been settled by a Judgement of a Division Bench of this Court reported in **97 LW 606 – R.Govindarajulu and another Vs. S.Dharman and another.**

9. Mr.N.Manoharan who had addressed the issue as a member of the Bar emphasised that wherever the rule is silent there is scope for misuse. In such cases, the Courts should step in to fill up the lacuna. He would also submit that when the issue of Court fees is being considered, the Government has to definitely be heard since even under the Court Fees Act Section 20 therein provides for a notice to the State Government in case of enquiry relating to the fees payable on the



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

pleadings or with reference to the valuation of the subject matter in the claim etc, and the State Government is deemed to be a party to the suit.

The Code of Civil Procedure also contemplates notice to the Government in cases where the Court is considering the application for permitting a suitor to file as an indigent person.

10. The learned counsel would further submit that it is also to be borne in mind that access to free Justice has been incorporated by the 42nd amendment of the Constitution by introducing 39-A and the latitude is towards a beneficial legislation. He would rely upon the following Judgement in support of the arguments.

(2011) 13 SCC 174 - Mathai M.Paikeday Vs. C.K.Antony,
where the Jurisprudence of Order XXXIII and Order XLIV has been discussed.



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

11. In the case of ***Sushil Thomas Abraham Vs. Skyline Build – 2020 (2) LW 744 (SC)***, the guidelines laid down by the Hon'ble Supreme Court as to who is the indigent person was pointed out by the counsel. The learned counsel would conclude that the Courts cannot transgress into the domain of the Executive. He would submit that in the instant case as per Seventh Schedule List II Entry 3 of the Constitution, the issues relating to Court fees falls within the domain of the State legislature.

12. Therefore, it is his contention that the Court could nudge the Government into framing / amending the Rules with reference to the procedure for payment of Court fees in the cases of appeals arising from out of claim petitions. However, till such time as the Rules are put in place it is open to the Court to pass interim directions to regulate the procedure which has not been spelt out under the Rules.

10/52



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

13. Mr.Edwin Prabhakar appearing on behalf of the State would at the outset submit that the State is an interested party to the lis in as much as the levy of Court fee is within the State's subject. He would submit that the payment of Court fee does not depend upon the success or failure of the person instituting the claim statement as Court fee is payable even if the claim is dismissed by the Tribunal. The issue of Court fee is only deferred but not waived totally.

14. The learned counsel would further submit that in the case of appeals, exemption is not automatic and the procedure under Order XXXIII and Order XLIV has to be followed to arrive at a conclusion as to whether the appellant can be permitted to sue as an indigent person. He would submit that when an appeal is filed for an enhancement by a claimant he already ceases to be in indigent situation considering the fact that he has been awarded compensation.

11/52



C.M.P.No.4119 of 2022 Etc., batch

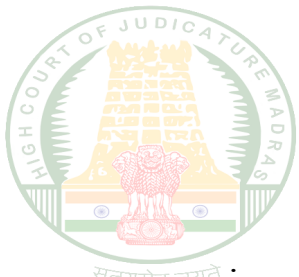
WEB COPY

15. The learned counsel would also rely on the Judgement reported in **97 LW 606 – R.Govindarajulu and another Vs. S.Dharman and another** and would submit that the exemption of Court fee is a matter for the Government to decide and Section 73 of the Tamil Nadu Court fees and Suit Valuation Act specifically provides for the same.

16. The Court by invoking its inherent jurisdiction cannot give a direction to the Government to waive Court fees in toto. He would rely on the Judgement reported in **1997 (1) LW 49 – M.Vaidurayamma Vs. P.Suryanarayanan.**

17. The learned Special Government Pleader would also contend that even if claimant has been permitted to sue as an indigent person before Claims Tribunal, when an appeal is filed his indigent

12/52



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

circumstances has to be examined once again. In support of this contention, he would rely upon the Judgement reported in **2013 SCC Online Delhi 2742 – Nand Kishore Sharma Vs. Delhi Society for Prevention of Cruelty to Animals and Another.**

18. He would finally submit that while discharging Justice, the Court of law should secure ends of Justice and Courts and Tribunal are set up to provide access to the poor and common people of the Country and this is the constitutional mandate. However, this mandate which is provided for the poor community shall also not be permitted to be misused.

Discussion:

19. In order to answer the issues, particularly the first issue a brief journey into the introduction of Court fee in the Indian Legal system and the reasons for its introduction has to be briefly touched

13/52



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

upon. The fee that is imposed on a litigant to contest a case in the Court of law is the Court fee. The concept of Court fee was totally alien to ancient India and for the first time it was introduced by Warren Hastings, Governor General of the East India Company in the year 1774. The object of the enactment was to dissuade unnecessary litigation by levying huge Court fees.

20. This system of levy had undergone various changes and ultimately it took the form of the Court Fees Act, 1867 which also forms the basis for the Tamil Nadu Court Fees and Suit Valuation Act, 1955. The imposition of Court fees, is to some extent necessary to meet the expenses for the administration of Justice by spending on the administrative work of the Courts. The levy of Court fee is covered in the Seventh Schedule List II Entry 3 of the Constitution of India.



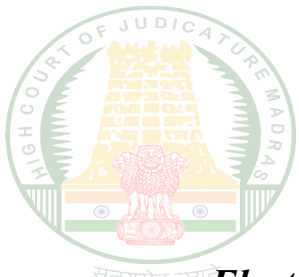
C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

21. In the matter of the *Secretary, Government of Madras, Home Department and others Vs. Zenith Lamp and Electrical Ltd. - AIR 1973 SC 724*, the Constitution bench of the Hon'ble Supreme Court was called upon to declare invalid Rule 1 of the High Court Fees Rules, 1956 as it relates to levy of fees on ad valorem scale. The argument put forward was that the fees was sought to be collected to compensate the Government both for the cost of administration of Civil as well as Criminal justice and litigants on the Civil side were being made to pay fees covering this expenditure. The argument that were advanced was that the levy was unwarranted and unjustified and whether the Court fees was a tax or a fees.

22. The Bench quoted with approval the observation in the Judgement of this Court, which was the subject matter before the Bench, reported in *ILR [1968] 1 MAD 247 – Zenith Lamps and*

15/52



C.M.P.No.4119 of 2022 Etc., batch

Electricals Ltd., Vs. The Registrar, High Court and others, in
WEB COPY

Paragraph No.74 therein:

“When a levy is impugned as a colorable exercise of legislative power, the State being charged with raising a tax under the guise of levying a fee, Courts have to scrutinize the scheme of the levy carefully, and determine whether, in fact, there is correlation between the services and the levy, or whether the levy is excessive to such an extent as to be a presence of a fee and not a fee in reality. If, in substance, the levy is not to raise revenues also for the general purposes of the State, the mere absence of uniformity or the fact that it has no direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service, or that some of the contributories do not obtain the same degree of service as others may, will not change the essential



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

character of the levy.”

23. The Constitution Bench held that it is for the State to establish what has to be levied as Court Fees and whether such levy is proper. In case of an enhancement in the Court fees, it is for the State to justify enhancement. Ultimately, the Bench answered in favour of the State of Madras and set aside the order of the High Court which had struck down the levy found in Article 1 of Schedule 1, Madras High Court Fees and Suits Valuation Act, 1955.

24. In answer to a question as to the nature of “*fees taken*”, the Bench had answered that the fees taken in the Court are not a tax. The Bench had also listed out the factors that the legislature had to take into account while levying the fees:

“While levying fees the appropriate legislature is competent to take into account all relevant factors, the



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of courts and officers administering civil justice the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Art. 14. But one thing the Legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue In other words, it cannot tax litigation, and make litigations pay say for road building or education or other beneficial schemes that a State may have. There must be a broad relationship with the fees collected and the cost of administration of civil justice.”



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

25. Therefore, it can be broadly construed that the levy of Court Fee is to off set the cost of administration of Civil Justice. The reason behind this concept is that exercise of Justice is enshrined in Article 39-A of the Constitution of India.

26. The Law Commission of India in its 189th report while considering the revision of the Court Fees structure had observed that the very reference for revision had been premised broadly on the following basis:

(a)The Court fees had not been revised for a long time and the present levy covers only a fraction of the administrative cost of the Judicial process, which inturn presupposes that the cost of administration has to be met only from this Court fees.

(b)To bring down vexatious litigant. Once again this emanated from the premise that the Court fee is kept high



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

which would discourage frivolous litigation, and

(c) Devaluation of Rupee has not been factored in the present Court fees structure which remained frozen in time.

27. The Law Commission had observed that the first two steps throws up constitutional and legal issues regarding access to Justice, whereas, third factor related to the realm of law and economics. They had discussed the History of the Common law, Right of Access to Justice and traced it to the Magna Carta. They had referred to William Blackston's comment:- *“It is the function of common law to protect the weak from the insults of the stronger”*. Therefore, the right to access became part of the common law remedy and was later recognised as part of the Constitutional Law.



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

28. The right to access to Courts, the right to legal aid and engaging a counsel was introduced by the Constitution in its 42nd amendment in the form of Article 39-A, which provides equal justice and free legal aid to all.

29. The Hon'ble Supreme Court in the Judgement of ***P.M.Ashwathamarayana Setty and others Vs. State of Karnataka – 1989 (1) SCC 696 (Supp.P)*** had observed that legislation on access to Justice is inextricably inter-twined with a highly emotional and even evocative subject that Court fee has limitation on access to Justice to citizens of all ranks in the society be they affluent or in penury.

30. The Bench had observed that all civilized Government should recognise the need for the access of the Justice being free. This sentiment has formed the basis for providing the exemption from the payment of Court fees in special cases, which is provided in Order

21/52



C.M.P.No.4119 of 2022 Etc., batch

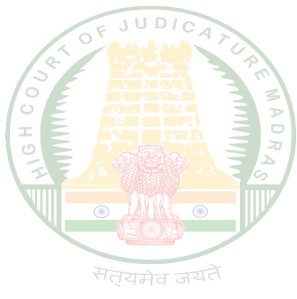
सत्यमेव जयते
WEB COPY

XXXIII Rule 1 of the CPC in the case of suits and Order XLIV Rule 1 of the CPC in the case of appeals. These are the two provisions which provides general exemptions to the payment of the Court fees. The procedure for declaring oneself to be indigent has been set out in Order XXXIII of the CPC.

31. We are now concerned with the Court fee payable and the exemption of Court fee in the self contained Act, namely, the Motor Vehicles Act. Rule 24 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, sets out the Court fees that is payable in respect of a claim petition. It would read as follows:

“Every application under Sub-Section (1) of Section 166 of the Act for payment of compensation shall be accompanied by a fee of Rs.1/- (Rupee one only) in the form of Court-fee stamp, if the claim in a case of accident is confined to special damage and if any further general

22/52



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

damage is claimed, an ad-valorem fee shall be charged on the aggregate of the special and general damage claims on the following scale, namely:-

<i>Amount of Claim</i>	<i>Amount of Court-fee</i>
Upto Rs.10,000/-	Rs.10/-
Rs.10,001/- to Rs.50,000/-	Rs.10/- plus one-fourth per cent of the amount by which the claim exceeds Rs.10,000/-.
Rs.50,001/- to Rs.1,00,000/-	Rs.122.50 plus half per cent of the amount by which the claim exceeds Rs.50,000/-
Over Rs.1,00,000/-	Rs.372.50 plus one per cent of the amount by which the amount of claim exceeds Rs.1,00,000/-.

(1-A) An appeal under section 173 of the Act shall be accompanied by a fee of Re. 1 (Rupee one only) in the form of Court-fee stamp, if the claim in a case of accident is confined to special damages and if any further general damage is claimed, an ad-valorem fee shall be charged on



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

the aggregate of the special and general damages claim on the following scales, namely:

<i>Amount of Claim</i>	<i>Amount of Court-fee</i>
1. Below Rs.2,000/-	No Appeal
2. Rs.2,001/- to Rs.5,000/-	Rs.10/-.
3. Rs.5,001/- to Rs.50,000/-	Rs.10/- plus one-fourth per cent of the amount by which the claim exceeds Rs.5,000/-
4. Rs.50,001/- to Rs.1,00,000/-.	Rs.122.50/- plus half per cent of the amount by which the claim exceeds Rs.50,000/-
5. Over Rs.1,00,000/-	Rs.372.50/- plus one per cent of the amount by which the claim exceeds Rs.1,00,000/-.

(3) The Claims Tribunal may, in its discretion, exempt any party from *the payment of fees prescribed under sub-rule (1):*

Provided that where a claim of a party has been accepted by the Claims Tribunal, the party shall have to



WEB COPY



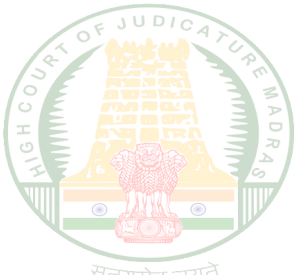
C.M.P.No.4119 of 2022 Etc., batch

pay the prescribed fees, exemption In respect of which has been granted Initially before a copy of the judgment is obtained:

Provided further that where the amount of award Is less than the amount of claim, the party shall be entitled to refund of the proportionate fee, namely, the difference between the fee actually paid and the fee due if the claim had been made for the amount of award.

32. Therefore, Rule 1 talks about the fee that is payable in the case of the claim petition before the Tribunal and Rule 1 A talks about the Court fee that is payable in the Case of an appeal. The provisions of Rule 24 (3) deals with the exemption of Court fees before the Claims Tribunal and this provision does not refer to Rule 24 (1) A. The counsels have been filing petitions for exemption of Court fees before this Court in the appeals filed under Section 173 and orders have been

25/52



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

passed in a mechanical manner. They have been invoking the provisions of Rule 24 (3) in respect of the appeal under Section 173 of the Motor Vehicles Act.

33. Prior to the 1989 Rules, the Tamil Nadu Motor Accident Claims Tribunal Rules, 1961 was in effect. Rule 20 contemplated the payment of Court fees and the provision would read as follows:

“20. Fees (i) Every application under sub-section (1) of Section 110-A of the 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 an accident is confined to special damages, and if any further general damages are claimed on advalorem fee shall be charged on the aggregate of the special and general damages claims on the following scales, namely :



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

<i>Amount of claim —</i>	<i>Amount of Court fee</i>
<i>(i) Upto Rs. 5,000/-</i>	<i>Rs. 10/-</i>
<i>Rs. 5,001 to Rs. 50,000/-</i>	<i>Rs. 10 plus $\frac{1}{4}$ per cent of the amount by which the claim exceeds Rs. 5,000/-</i>
<i>Rs:50,000 to Rs. 100,000/-</i>	<i>Rs.122.50 plus $\frac{1}{2}$ per cent of the amount by which the claim exceeds Rs. 50,000/-</i>
<i>(iv) Over Rs.1,00,000/-</i>	<i>Rs.372.50 plus 1 per cent of the amount by which the claim exceeds Rs.1,00,000/-</i>

[Sub-section (1) substituted: as per G.O. Ms. No. 640,

27/52



WEB COPY



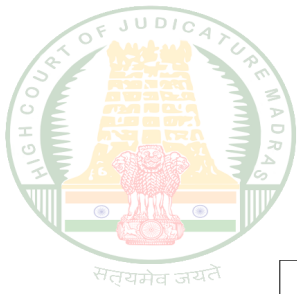
C.M.P.No.4119 of 2022 Etc., batch

Home, dated 3rd March 1966, published in Fort St.

George Gazette, Part V, page 263, dated 23-3-1966]

(i-A) An appeal under section 110-D (1) of the Act shall be accompanied by a fee of Rs. 1/- in the form of Court-fee Stamp, if the claim in a case of accident is confined to special damages and if any further general damages are claimed an advalorem fee shall be charged on the aggregate of the special and general damages claim on following scales namely :

<i>Amount of Claim</i>	<i>Amount of Court Fee</i>
<i>Below Rs. 2,000/-</i>	<i>No appeal</i>
<i>Rs.2001 to Rs. 5,000/-</i>	<i>Rs.10/-</i>
<i>Rs.5001/- to Rs.50,000/-</i>	<i>Rs.10/- plus one-fourth per cent of the amount by which the claims exceeds Rs.5,000/-</i>



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

<i>Amount of Claim</i>	<i>Amount of Court Fee</i>
<i>Rs.50,001/- to Rs.1,00,000/-</i>	<i>Rs.122.50 plus half per cent of the amount by which the claim exceeds Rs. 50,000/-</i>
<i>Over Rs.1,00,000/-</i>	<i>Rs.372.50 plus one per cent of the amount by which the claim exceeds Rs.1,00,000/-</i>

(2) The Claims Tribunal may, in its discretion, exempt a party from the payment of fee prescribed under sub-rule 1.

Provided that where a claim of a party has been accepted by the Claims Tribunal the party shall have to pay the prescribed fee exemption in respect of which has been granted initially before a copy of the Judgement is



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

obtained.

Provided further that where the amount of award is less than the amount of claim the party shall be entitled to refund the proportionate fee namely the difference between the fee actually paid and the fee due if the claim had been made for the amount of award.

34. These Rules are in pari materia to the 1989 Rules. Even in the 1961 Rules, under Rule 20 (2) the discretion to exempt a party from payment of Court fees only related to payment of Court fees prescribed in Sub rule (1), namely, fee payable before the Tribunal. The same provision was not available for appeals. This situation continues even in the 1989 Rules which remains in force to date.

35. In the Judgement of this Court reported in **97 LW 606 – R.Govindarajulu and another Vs. S.Dharman and another**, the

30/52



C.M.P.No.4119 of 2022 Etc., batch

Division Bench of this Court has clearly and emphatically observed as follows:

WEB COPY

“18.Thus, we find that uniformly it has been countenanced that the High Court, while hearing an appeal under the Act, exercises its ordinary appellate powers and should follow its practice and procedure as are normally attributable to it as an ordinary appellate Court; and in the absence of any circumscription or regulation of the said powers, the rules of practice and procedure, and power as per the provisions of the Code can be legitimately invoked for the purposes set out therein in the matter of dealing with such an appeal. Order XXXIII of the Code deals with institution of proceedings by indigent persons. Order XLIV deals with appeals by indigent persons and it contemplates, that appeals by indigent persons shall be dealt with in the same manner as



WEB COPY



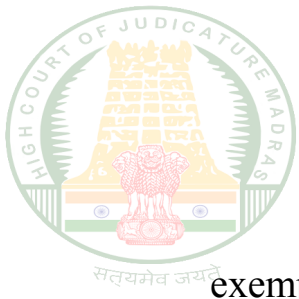
C.M.P.No.4119 of 2022 Etc., batch

institution of original proceedings by indigent persons. In this view, we have to hold that it will be competent for the appellants to invoke the aid of Order XLIV and thereby Order XXXIII of the Code.”

36. The reference to the Bench was on the basis of a note by the office as to the propriety of the appellants invoking the provisions of the code that too Order XLIV and its allied provisions in respect of Motor Accident Claims Tribunal appeal. This Judgement still holds the fort.

37. In a later Judgement of this Court reported in **2004 (2) TN MAC 65 – T.Kanchana Devi Vs. R.D.Mani and others**, this Court has observed that the exemptions sought for before the Claims Tribunal does not contemplate a roving enquiry as contemplated under Order XXXIII of the CPC. It is for the Tribunal to use its discretion to

32/52



C.M.P.No.4119 of 2022 Etc., batch

exempt the person from payment of the Court fee.

WEB COPY

Rule 24 (3) reads as follows:- *“The claims Tribunal may, in its discretion, exempt any party from the payment of fees prescribed under Sub-Rule 1”.*

38. Therefore, we come to the issue of *“what is discretion”*. In the Judgement of the Hon'ble Supreme Court reported *AIR 1973 SC 2145 – Akalu Ahir and others Vs. Ramdeo Ram*, the Bench had observed that where, the power is discretionary then it has to be exercised judiciously and not arbitrarily. The Bench had observed as follows:

“Judicial discretion, as has often been said, means a discretion which is informed by tradition, methodised by analogy and disciplined by system.”



WEB COPY

39. In the Judgement reported in **2004 (8) SCC 307 – Aero**

Traders Pvt. Ltd., Vs. Ravinder Kumar Suri, the Bench had observed as follows:

“According to Black's Law Dictionary "judicial discretion" means the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate. (See



WEB COPY



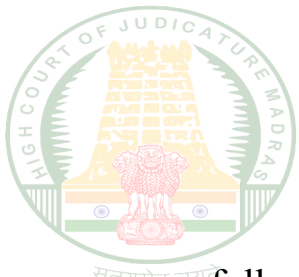
C.M.P.No.4119 of 2022 Etc., batch

27 Corpus Juris Secundum page 289). When it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.”

Therefore, although the roving enquiry has not been contemplated the Tribunal while exercising its discretion has to exercise it judiciously and with some rationale. That it has used its discretion has to also be spelt out.

40. In the Judgement reported in ***AIR 1990 SC 1176 – Som Raj and others Vs. State of Haryana and others***, the Hon'ble Supreme Court while discussing the discretionary power has observed as

35/52



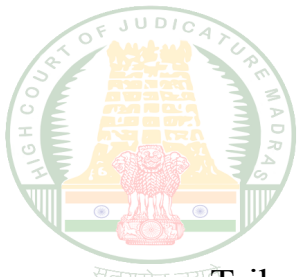
C.M.P.No.4119 of 2022 Etc., batch

follows:
WEB COPY

“Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority.”

The Bench had observed that discretion should be governed by principles of Rules and not by whims and fancies of the Judicial Officer. The claimant who approaches the Court comes to the Court stating that by reason of the accident they have suffered loss of income and the claim petitions normally state the occupation as well as the income that the injured / deceased had earned prior to the accident. Therefore, in all these cases, the claimants do not project themselves as persons living in indigent circumstances. In such circumstances, the discretion has to be used judiciously and not for the asking. Coming to the case of exemptions in appeals filed under Section 173 of the Motor Vehicles Act, Rule 24 (3) does not contemplate exemption in appeals and exemptions are only contemplated for claim petition before the

36/52



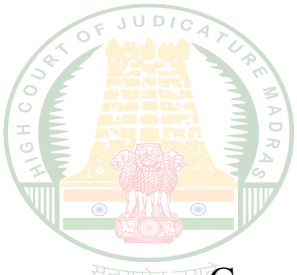
C.M.P.No.4119 of 2022 Etc., batch

सत्यमेव जयते
WEB COPY

Tribunal. This does not preclude a litigant from seeking exemption in the case of an appeal under Section 173. However the exemption has to be sought for and granted in the manner contemplated under Order XLIV read with Order XXXIII of the CPC. This is the dicta that has been laid down in the case of ***R.Govindarajulu and another Vs. S.Dharman and another - 97 LW 606*** Supra which has not been overruled to date.

41. As already discussed the subject of Court fees falls within the Seventh Schedule List II Entry 3 of the Constitution of India making it a special subject. Even as per the procedure contemplated under Order XXXIII Rule 13 of the CPC, the State Government is deemed a party in respect of all the matter arise under Order XXXIII Rule 10, 11, 11 A or 12 of the Code. These matters are also deemed to be the questions arising between the parties to the suit within the meaning to Section 47 of the Code. In the matters relating to Court fees, the State

37/52



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

Government should definitely be put on notice as Court fees constitutes a fiscal Statute.

42. In the Judgement reported **2001 (5) SCC 22 – Union Bank of India Vs. Khader International Construction**, the Hon'ble Supreme Court has considered at length the provisions of Order XXXIII of the CPC which the Bench had held was an enabling provision which allows the person to file the suit at an initial stage without paying Court fee. The Bench had held that the exemption only mentioned that the payment of Court fee was deferred and it did not imply that the payment of Court fee has been waived. They had observed so in paragraph no.20 of the Judgement:

“If the plaintiff ultimately succeeds in the suit, the court would calculate the amount of court fee which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person and that amount would be



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

recoverable by the State from any party ordered by the decree to pay the same. It is further provided that when the suit is dismissed, then also the State would take steps to recover the court fee payable by the plaintiff and this court fee shall be a first charge on the subject matter of the suit. So there is only a provision for the deferred payment of the court fees and this benevolent provision is intended to help the poor litigants who are unable to pay the requisite court fee to file a suit because of their poverty. Explanation I to Rule 1 of Order XXXIII states that an indigent person is one who is not possessed of sufficient amount (other than property exempt from attachment in execution of a decree and the subject matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit. It is further provided that where no such fee is prescribed, if such person is not entitled to property worth one thousand



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

rupees other than the property exempt from attachment in execution fo a decree, and the subject matter of the suit he would be an indigent person.”

43. This sentiment has been echoed in the latter Judgement reported in **2007 (5) SCC 698 – R.V.Dev Alias R. Vasudevan Nair Vs. Chief Secretary, Govt. of Kerala**, where again the Bench has observed as follows:

“8. Order XXXIII of the Code of Civil Procedure deals with suits by indigent persons whereas Order XLVI thereof deals with appeals by indigent persons. When an application is filed by a person said to be indigent, certain factors for considering as to whether he is so within the meaning of the said provision is required to be taken into consideration therefor. A person who is permitted to sue as an indigent person is liable to pay the court fee which



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

would have been paid by him if he was not permitted to sue in that capacity, if he fails in the suit of the trial or even without trial. Payment of court fee as the scheme suggests is merely deferred. It is not altogether wiped off. Order XXXIII Rule 10 of the Code of Civil Procedure provides for the consequences in regard to the calculation of the amount of court fees as a first charge on the subject matter of the suit.”

44. We next come to the question as to what has to be considered as sufficient means which is the language in Order XXXIII of the CPC. In the Judgement reported in **2011 (13) SCC 174 – Mathai M.Paikeday Vs. C.K.Antony**, the Hon'ble Supreme Court had encapsulated the object and purpose of the Order XXXIII and XLIV in paragraph no.12 in their Judgement as follows:

“12.The object and purpose of Order 33 and Order



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

44 of the Code of Civil Procedure are to enable a person, who is ridden by poverty, or not possessed of sufficient means to pay court fee, to seek justice. Order 33 and Order 44 of the Code of Civil Procedure exempts such indigent person from paying requisite court fee at the first instance and allows him to institute suit or prosecute appeal in forma pauperis.”

45. Thereafter, the bench had considered various Judgements, American Jurisprudence and the Corpus Juris Secundum and had summed up the term indigent person in terms of Explanation I to Rule 1 of Order XXXIII of the CPC as *“one who is either not possessed of sufficient means to pay court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such court fee is not prescribed.”*



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

46. Therefore, although Rule 24 (3) does not contemplate a roving enquiry and leaves it to the discretion of the Judicial Officer, as already submitted certain useful yardstick / guidelines has to be adopted for granting these exemptions under Rule 24 (3) of the Motor Accident Claims Tribunal Rules. The Judicial Officers and Administrative Officers have to use their discretion judiciously and not arbitrarily or for the asking.

47. In the Judgement reported in **2003 (4) CTC 268 – Solaiammal (died) and another Vs. Rajarathinam and five others**, the learned Judge had observed that the Court have to be not only vigilant and read between lines in order to arrest the tendency of the litigants undervaluing the relief, paying minimum Court fee and obtaining substantial relief but also ensure that the State does not lose revenue. This principle had been emphasised by the Hon'ble Supreme Court in the Judgement reported in **AIR 1973 SC 2384 – Shamsher Singh Vs.**

43/52



C.M.P.No.4119 of 2022 Etc., batch

सत्यमेव जयते
WEB COPY

Rajinder Prasad and others which the learned Judge has relied upon.

48. The learned Judge had also set out the observation of the Hon'ble Supreme Court that a broad correlation of the fees collected and the cost of administration of Civil Justice need to be emphasised. The learned Judge has also relied upon the Judgement reported in **AIR 1989 SC 100 – Ashwathanarayana Setty Vs. State of Karnataka** and extracted the following observations therein:

“A fee is, therefore, a charge for the special service rendered to a class of citizens by Government or Governmental agencies and is generally based on the expenses incurred in rendering the services....

If the essential character of the impost is that some special service is intended or envisaged as a quid pro quo to the class of citizens which is intended to be benefited by the service and there is a broad and general correlation



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

between the amount so raised and the expenses involved in providing the services, the impost would partake the character of a "fee" notwithstanding the circumstance that the identity of the amount so raised is not always kept distinguished but is merged in the general revenues of the State and notwithstanding the fact that such special services, for which the amount is raised, are, as they very often do, incidentally or indirectly benefit the general public also. The test is the primary object of the levy and the essential purpose it is intended to achieve. The correlation between the amount raised through the "fee" and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate, arithmetical equivalence or precision in the correlation; but it would be sufficient that there is a broad and general correlation."



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

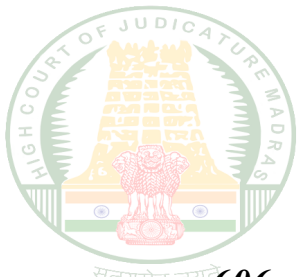
49. The learned Judge has gone on to observe as follows:

“In the realm of proper valuation of the plaint and payment of correct Court fee, absolutely there is no place in Judicial Generosity. Correct valuation of the plaint and the payment of correct Court fee for the purpose of pecuniary jurisdiction cannot be sacrificed showing judicial generosity.”

50. No doubt, these observations relate to suits. However, the underlying principle is to ensure that the benefit granted reaches the person for whom the benefit has been made and to prevent unscrupulous person from usurping the benefit unto themselves.

51. To sum up the discussion, in the light of the Judgement in R.Govindarajulu and another Vs. S.Dharman and another - 97 LW

46/52

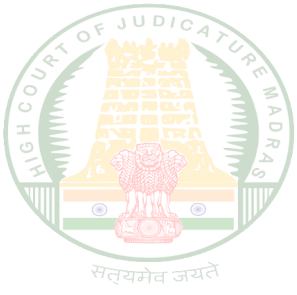


C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

606, the provisions of Rule 24 (3) of Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, is not applicable to the appeal under Section 173. In these cases the procedure under Order XXXIII and Order XLIV have to be followed.

52. The exemption at the discretion of the Judicial Officer is available only before the Claims Tribunal. The Judgements of the Hon'ble Supreme Court referred supra has observed that discretion has to be exercised judiciously, uniformly with sound logical reasoning and not as a matter of routine. Since no guidelines have been framed to regulate this exemption, therefore each Judicial Officer adopts his / her reasoning for exercising the Jurisdiction. Therefore, there is a need for the Government, which is the main player in the levy of Court fees to step in and make the necessary amendments to Rule 24 (3) of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules.



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

53. Till such time as the Rules are framed and considering the differing views of the Judicial Officers while granting exemption, the following Guidelines may be followed by the Motor Accident Claims Tribunal while considering the case of an exemption under Rule 24 (3) of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules in case of claims petitions before the Tribunal.

(a) In case the claimant comes to the Court stating that he has been engaged in an occupation / avocation, earning an income then care must be taken to obtain an affidavit from the applicant stating that despite this they do not possess the wherewithal to pay the Court fee and that they have no movable or immovable property of value.

(b) The affidavit shall be sworn before the notary and



WEB COPY



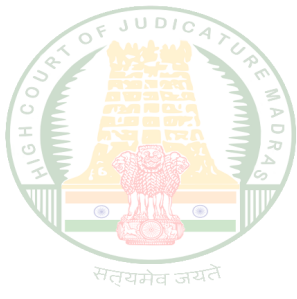
C.M.P.No.4119 of 2022 Etc., batch

it should also contain an undertaking that the claimant shall pay the Court fees irrespective of his succeeding in the claim or not.

(c) While granting the exemption, which is normally prayed for in the form of a petition, the Tribunal shall briefly record its reason for granting the exemptions.

(d) In the award it shall be clearly observed that the award amount shall be deposited within a specified time and once the award amount is deposited the court fee component shall be first withdrawn and put in to a separate Court account.

(e) A copy of every order passed by the Tribunal granting exemption shall be marked to the District



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

Collector of the respective District.

(f)No Tribunal shall permit the withdrawal of the amount deposited in compliance of the award without the claimants producing the proof of having paid the Court fees.

The draft amendment to Rule 24 which was proposed to provide a blanket exemption from payment of Court fee to be recovered after the award is passed may in the discretion of the Government be given effect to. Copy of this order may therefore be placed before the Chief Secretary for appropriate action if so deemed fit.

54. The 1st issue that had been raised by this Court, namely, whether the provisions of Rule 24 (3) would apply to the Appeals under Section 173 of the Motor Vehicles Act without proof of the indigent situation, has to definitely be answered in the negative.

50/52



C.M.P.No.4119 of 2022 Etc., batch

WEB COPY

55. With reference to the second issue, it is needless to state that no litigant can be permitted to withdraw the amount without paying the Court fee.

56. This Court places on record its appreciation for the assistance rendered by Mr.N.Manoharan who had argued on behalf of the Bar, Mr.Sharath Chandran, Amicus Curiae appointed by this Court and Mr.Edwin Prabakar, Special Government Pleader for the valuable insight and the intensive research which they have done to assist this Court.

05.05.2022

kan

Index : Yes/No

Speaking order/non-speaking order

Note: The order may be circulated to all the Motor Accidents Claims Tribunals across the State and the Registry of this Court.

51/52



WEB COPY



C.M.P.No.4119 of 2022 Etc., batch

P.T.ASHA, J.,

kan

Pre-delivery order in
C.M.P.No.4119 of 2022 in
C.M.A.(SR).No.19930 of 2022

05.05.2022

52/52