



2024 INSC 457

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024
(Arising out of SLP(C)No.729/2020)

ALIFIYA HUSENBHAI KESHARIYA ... APPELLANT(S)

VERSUS

SIDDIQ ISMAIL SINDHI & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL J. ,

1. Leave granted.

At the outset, we may remind ourselves of what Krishna Iyer, J. had observed in **State of Haryana v. Darshana Devi**¹ that

"2. The poor shall not be priced out of the Justice market by insistence on court-fee and refusal to apply the exemptive provisions of Order 33, CPC."

2. The sole point for our consideration is whether a

¹ (1979) 2 SCC 236

person who is entitled to receive compensation by way of a claim before the Motor Accident Claims Tribunal can be said to have given up its status as an 'indigent person', by virtue of the amount slated to be received. In other words, whether a person being an award holder, of monetary compensation without actual receipt thereof, would be disentitled from filing an appeal seeking enhanced compensation as an indigent?

3. The factual scenario giving rise to this appeal is :-

3.1 The appellant, who was the original claimant before the Motor Accident Claims Tribunal, [Court of Motor Accident Claims Tribunal (Auxiliary) & 10th (Adhoc) Addl. District Court Judge, Jamnagar]² in M.A.C.P.No.255 of 2011, was injured in an accident on 4th July 2010, while riding pillion on a bike, which was hit by a truck. Having sustained injuries, she was admitted for medical treatment at a hospital for a period of fourteen days and subsequently she underwent plastic surgery.

3.2 At the time of the accident, she was earning

² Hereafter, 'Tribunal'

Rs.3,000/- per month, but, post the accident, she sustained permanent disablement, and hence had not been able to work thereafter. A claim was filed for Rs.10 lakhs with 18% interest and costs.

3.3 The Tribunal vide Award dated 17th October 2016, awarded a sum of Rs.2,41,745/- with 9% interest from the date of claim petition till the date of realization and proportionate cost(s).

4. Dissatisfied thereby, the claimant-appellant approached the High Court of Gujarat by way of Regular First Appeal No.2611/2017. Misc. Civil Application No.3/2018 was filed therein by which the claimant-appellant prayed for permission to file the said First Appeal as an indigent person.

5. The High Court vide judgment and order dated 7th August, 2018 dismissed the Misc. Civil Application observing as under :

"...3. It is a matter of record that the claimants filed claim petition before the Tribunal and claimed Rs.10,00,000/-, whereby the Tribunal by partly allowing the claim petition vide the impugned award, awarded a sum of Rs,2,41,745/- along with 9% interest from the date of claim petition till its realization.

4. In light of the aforesaid, the applicant-appellant cannot be considered to be indigent person and therefore, he has to pay

court fees first.

5. Ms. Rana, learned counsel for the applicant, however, submits that, till date, no amount is received by the applicant. It is open for the applicant to pursue the said remedy before appropriate forum.

In view of the above, present application is not entertained. Time to deposit Court fees is granted for 8 weeks from today."

(Emphasis supplied)

6. We may refer to this Court's decision in **Mathai M. Paikeday v. C.K. Antony**³, wherein the concept of an indigent person has been discussed at length. Relevant extracts are reproduced as follows:-

"16. The concept of indigent person has been discussed in *Corpus Juris Secundum* (20 CJS Costs § 93) as following:

"§ 93. *What constitutes indigency.*—The right to sue in forma pauperis is restricted to indigent persons. A person may proceed as poor person only after a court is satisfied that he or she is unable to prosecute the suit and pay the costs and expenses. A person is indigent if the payment of fees would deprive one of basic living expenses, or if the person is in a state of impoverishment that substantially and effectively impairs or prevents the pursuit of a court remedy. However, a person need not be destitute. Factors considered when determining if a litigant is indigent are similar to those considered in criminal cases, and include the party's employment status and income, including income from government sources such as social security and unemployment benefits, the ownership of unencumbered assets, including real or personal property and money on deposit, the party's total indebtedness, and any financial assistance

³ (2011) 13 SCC 174

received from family or close friends. Not only personal liquid assets, but also alternative sources of money should be considered."

17. The eligibility of person to sue in *forma pauperis* has been considered in *American Jurisprudence* (20 Am Jur 2d Costs § 100) as thus:

"§ 100. *Eligibility to sue in forma pauperis; generally.*—The burden of establishing indigency is on the defendant claiming indigent status, who must demonstrate not that he or she is entirely destitute and without funds, but that payments for counsel would place an undue hardship on his or her ability to provide the basic necessities of life for himself or herself and his or her family. Factors particularly relevant to the determination of whether a party to a civil proceeding is indigent are: (1) the party's employment status and income, including income from government sources such as social security and unemployment benefits; (2) the ownership of any unencumbered assets, including real or personal property and monies on deposit; and finally (3) the party's total indebtedness and any financial assistance received from family or close friends. Where two people are living together and functioning as a single economic unit, whether married, related, or otherwise, consideration of their combined financial assets may be warranted for the purposes of determining a party's indigency status in a civil proceeding."

7. The Code of Civil Procedure, 1908⁴ provides for mechanism by which a person who is indigent may file a suit or an appeal. Order XXXIII thereof pertains to filing of suits and Order XLIV deals with appeals by

⁴ Hereinafter C.P.C.

such persons.

8. In the present matter, we are concerned with an appeal envisaged under Section 173 of the Motor Vehicle Act, 1988⁵.

9. Rule 1 of Order XLIV dealing with appeal filed as an indigent person, reads as under :

"1. Who may appeal 3[as an indigent person.
— Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable."

10. The operation of the above two provisions has been noted by this Court in **R.V. Dev v. Chief Secretary, Govt. of Kerala**⁶, in para 8 whereof it was observed :

"8.....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 are required to be taken into consideration therefor. A person who is permitted to sue as an indigent person is liable to pay the court fees which would have been paid by him if he was not permitted to sue in that capacity, if he fails in the suit at the trial or without trial. Payment of court fees as the scheme suggests is merely deferred. It is not altogether wiped off."

⁵ Hereinafter the 'MV Act'

⁶ (2007) 5 SCC 698

(Emphasis supplied)

In regard to the application of Order XXXIII of the Code, a perusal of the decision in **Union Bank of India v. Khader International Construction & Ors.**⁷ reveals the following principles :

- (i) It is an enabling provision for filing of a suit by an indigent person without paying the court fee at the initial stage.
- (ii) If the suit is decreed for the plaintiff, the court fee would be calculated as if the plaintiff had not originally filed the suit as an indigent person. The said amount is recoverable by the State in accordance with who may ordered to pay the same in the decree.
- (iii) Even when a suit is dismissed, the court fee shall be recoverable by the State in the form of first charge on the subject-matter of the suit.

It was further held that -

"**20**...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."

⁷ (2001) 5 SCC 22

11. The intent of Orders XXXIII and XLIV is unmistakable. They exemplify the cherished principle that lack of monetary capability does not preclude a person from knocking on the doors of the Court to seek vindication of his rights.

12. It is unquestioned that a person dissatisfied with the amount of compensation received can file an appeal. In the present case, for a claim of Rs.10 lakhs, the Tribunal awarded compensation which was less than Rs.2.5 lakhs. Without commenting on the merits of the matter, we recognize the desire of the claimant-appellant to file an appeal.

13. Once again turning to **Darshana Devi** (supra), we refer to certain observations made therein -

"5.....Our perspective is best projected by Cappelletti, quoted by the Australian Law Reform Commission:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement - the most 'basic human right' - of a system which purports to guarantee legal

right." [M. Cappelletti, Rabels, (1976) 669 at 672]

We should expand the jurisprudence of access to justice as an integral part of Social Justice and examine the constitutionalism of court-fee levy as a facet of human rights highlighted in our Nation's Constitution. If the State itself should travesty this basic principle, in the teeth of Articles 14 and 39-A, where an indigent widow is involved, a second look at its policy is overdue. The Court must give the benefit of doubt against levy of a price to enter the temple of justice until one day the whole issue of the validity of profit-making through sale of civil justice, disguised as court-fee, is fully reviewed by this Court..."

14. In the present case although the State is not the one in appeal, the observations in regard to the insistence upon court fees by the High Court to be taken from the meager amount awarded as compensation even after having recorded that she had not yet received the said amount, has prompted us to refer to the above extract.

15. The ground, upon which the claimant-appellant's application to file the appeal as an indigent person was rejected, was that she had received compensation by way of the Award of the Tribunal, and therefore, she was not indigent. We find this observation to be belied by the impugned order itself as the learned Single Judge has

recorded the submission of the counsel for the claimant-appellant that no money stood paid to her at that point in time. So even though she had been awarded a sum, her indigency was not extinguished thereby. Any which way, in our considered view, the High Court was incorrect in rejecting the Misc. Application.

16. There is a further ground on which we find that the High Court erred in not allowing the claimant-appellant to file the appeal. The language used in Orders XXXIII and XLIV so far as deferring of payment of court fees is concerned, as was observed in **Khader International** (supra), that if the suit so filed, as an indigent person succeeds, the Court fee shall be deductible from the amount received as a result thereof as if the person who files the suit is not an indigent.

17. Order XLIV Rule 3(2) provides as under :

"3. Inquiry as to whether applicant is an indigent person.-(1).....

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred."

The Appellate Court, in accordance with the above, did not conduct any inquiry. The same was necessitated since nothing on record speaks of the claimant-appellant having filed the claim before the learned Tribunal as an indigent person, in which case she would be covered under Rule 3(1), which provides that no further inquiry would be required in respect of a person who was allowed to sue or appeal as an indigent person if they make an affidavit to the effect that they have not ceased to be an indigent unless the Government pleader objects or disputes such claim in which case an inquiry shall be held by the Appellate Court or under the orders thereof.

18. On both counts, one, that she had not yet received the money and, therefore, at the time of filing the appeal she was arguably indigent; and second, that the statutory requirement under the C.P.C., as described above, was not met - the order of the learned Single Judge has to be set aside.

19. Having observed as above, we allow the appeal and set aside the impugned judgment and order dated 7th August, 2018 of the learned Single Judge passed in Misc. Civil Application No.3/2018 in Regular First Appeal

No.2611/2017. It would have been ideal for us to have remanded the matter to the High Court for an inquiry to be conducted by its orders in accordance with Order XLIV, however, in the peculiar facts and circumstances of this case, keeping in view that considerable time has passed since the impugned order in the First Appeal, we grant liberty to the appellant to appeal as an indigent person observing that, at the relevant time, her application ought to have been looked into, verified and then ordered upon, which was not done.

20. While recognizing that in ordinary circumstances this Court should not impose timelines for disposal of cases, but considering the facts of this case, in particular, that the Award of the Tribunal is dated 17th October, 2016, and the rejection of Misc. Civil Application seeking permission to file the appeal as an indigent person before the High Court, is dated 7th August, 2018, we request the High Court that the appeal filed by the claimant-appellant be decided expeditiously, and preferably within a period of six months from the date of receipt of the copy of this judgment. We direct the Registry to immediately transmit the same to the learned Registrar General of

the High Court of Gujarat for necessary follow-up
action.

Pending application(s), if any, shall stand disposed
of.

.....J.
[J.K. MAHESHWARI]

.....J.
[SANJAY KAROL]

New Delhi;
May 27, 2024.