

State of Haryana

Vs

Smt. Darshana Devi & Others

Special Leave Petition (Civil) No. 4120 of 1978

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

12.02.1979

JUDGMENT

KRISHNA IYER, J. –

1. We refuse leave but with a message tag.
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 XXXIII, CPC. So we are distressed that the State of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of our Republic, expressed in Article 14 and stressed in Article 39A of the Constitution, has sought leave to appeal against the order of the High Court which has rightly extended the 'pauper' provisions to auto-accident claims. The reasoning of the High Court in holding that Order XXXIII will apply to tribunals which have the trappings of the civil court finds our approval. We affirm the decision.
3. Even so it is fair for the State to make clear the situation by framing appropriate rules to exempt from levy of court-fee cases of claims of compensation where automobile accidents are the cause.
4. Here is a case of a widow and daughter claiming compensation for the killing of the sole breadwinner by a State Transport bus; and the Haryana Government, instead of acting on social justice and generously settling the claim, fights like a cantankerous litigant even by avoiding adjudication through the device of asking for court-fee from the pathetic plaintiffs.
5. Two principles are involved. Access to court is an aspect of social justice and the State has no rational litigation policy if it forgets this fundamental. 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.

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 39A, 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. Before parting with this point we must express our poignant feeling that no State, it seems, has, as yet, framed rules to give effect to the benignant provision of legal aid to the poor in Order XXXIII, Rule 9A, Civil Procedure Code, although several years have passed since the enactment. Parliament is stultified and the People are frustrated. Even after a law has been enacted for the benefit of the Poor, the State does not bring into force by wilful default in fulfilling the *conditio sine qua non*. It is public duty of each great branch of Government to obey the rule of law and uphold the trust with the Constitution by making rules to effectuate legislation meant to help the poor.

6. The second principle the State of Haryana has unhappily failed to remember is its duty under Article 41 of the Constitution to render public assistance, without litigation, in cases of disablement and undeserved want. It is a notorious fact that our highways are graveyards on a tragic sale, what with narrow, neglected roads, reckless, unchecked drivers, heavy vehicular traffic and State Transport buses often inflicting the maximum casualties. Now that insurance against third party risk is compulsory and motor insurance is nationalised and transport itself is largely by State Undertakings, the principle of no-fault liability and on-the-spot settlement of claims should become national policy. The victims, as here, are mostly below the poverty line and litigation is compounded misery. Hit-and-run cases are common and the time is ripe for the Court to examine whether no-fault liability is not implicit in the Motor Vehicles Act itself and for Parliament to make law in this behalf to remove all doubts. A long-ago Report of the Central Law Commission confined to hit-and-run cases of auto-accidents is gathering dust. The horrendous increase of highway casualties and the chronic neglect of rules of road-safety constrains us to recommend to the Central Law Commission and to Parliament to sensitize this tragic area of tort law and overhaul it humanistically.

7. Another aspect must be noticed before we part with this petition. In many States, for want of judicial manpower or other pathological causes, the accident claims pend before tribunals in heartless slowness. Courts must give this bleeding class of cases high priority, adopt simplified procedures without breach of national justice, try out pre-trial settlements and narrow down the controversy and remember, that 'wiping every tear from every eye' has judicial relevance. For law must keep its promise to justice.

8. While we dismiss the petition for leave, we hope the Haryana State will hasten to frame rules under the Motor Vehicles Act to enable claimants for compensation to be free from payment of court-fee.

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