



State of Haryana v. Darshana Devi, (SC)

1979 PLRonline 0002

## **SUPREME COURT OF INDIA**

Before:- V. R. Krishna Iyer and O. Chinnappa Reddy, JJ.

State of Haryana - Petitioner

Versus

Smt. Darshana Devi and Ors - Respondents.

Special Leave Petn. (Civil) No. 4120 of 1978

12.2.1979.

### **Constitution of India, Articles 136, 14 and 39A - Civil Procedure Code, 1908, Order 33, Rule 1 - Motor Vehicles Act, 1939, Section 110C 'Pauper' -**

**Extension of Pauper Provisions to Auto-Accident Claims:** The High Court's decision to extend the pauper provisions under Order 33 of the Civil Procedure Code to auto-accident claims was affirmed. The State of Haryana's appeal was refused, upholding the principle that court fees should not prevent the indigent from accessing justice. This decision aligns with Articles 14 and 39A of the Constitution, emphasizing equal justice for all, including indigent claimants.

**State's Duty to Exempt Indigent Claimants from Court Fees:** Need for the State to frame rules under the Motor Vehicles Act to exempt compensation claims from court fees, particularly in cases involving automobile accidents. This would ensure that the indigent are not denied justice due to financial constraints.

**Access to Justice as a Fundamental Human Right:** The court underscored the principle that access to justice is an integral part of social justice and a fundamental human right. It called for a review of the constitutionality of court fees, suggesting that the imposition of such fees on indigent claimants violates Articles 14 and 39A of the Constitution.

**Implementation of Legal Aid Provisions:** The court expressed concern over the lack of implementation of legal aid provisions under Order 33, Rule 9A of the Civil Procedure Code, despite the legislative intent to assist the poor. The failure to enact rules to give effect to these provisions was criticized as a dereliction of the State's public duty.

**National Policy on No-Fault Liability and On-the-Spot Settlements:** The judgment emphasized the need for a national policy on no-fault liability and on-the-spot settlements for auto-accident claims, given the high incidence of highway casualties and the financial hardship faced by victims, often below the poverty line. The court urged Parliament to legislate in this area to provide immediate relief to accident victims.



**Judicial Prioritization and Simplification of Procedures for Accident Claims:** The court called for accident claims to be given high priority and for procedures to be simplified to ensure timely justice. Pre-trial settlements and narrowing down controversies were recommended as measures to expedite the resolution of such claims.

For the Petitioner :- Mr. Prem Malhotra, Advocate and Mr. M. N. Shroff, Advocate.

## JUDGMENT

**Krishna Iyer, J.** :- We refuse leave but with a message tag.

2. The poor shall not be prised out of the justice market by insistence on court-fee and refusal to apply the exceptive provisions of Order 33, C.P.C. 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 33 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 bread-winner 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 Cappallatti, 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 33 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 condition sine qua non. It is a 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 scale, 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 pending 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.

Petition dismissed.