

HIGH COURT OF SIKKIM, GANGTOK
(Civil Appellate Jurisdiction)

S.B. : HON'BLE SHRI SUNIL KUMAR SINHA, C.J.

CM Appl. No. 402 of 2014
in
MAC App. No. 24 of 2014

APPELLANT

Shri Tenzing Wangdi Lepcha,
S/o Tshering Wangdi Lepcha,
Singhik, Sentam, Mangan,
P.O. & P.S. Singhik, Mangan,
North Sikkim.

Versus

RESPONDENT

The Branch Manager,
United India Insurance Co. Ltd.,
Having its Branch Office at:
Deorali Bazar,
N.H. 31-A, Deorali,
Gangtok, East Sikkim.

Appearance:

Mr. N. Rai, Sr. Advocate with Ms. Tamanna Chettri, Advocate
for the Appellant.

Mr. Thupden G. Bhutia, Advocate for the Respondent.

Mr. J.B. Pradhan, Addl. Advocate General with Mr. S.K.
Chettri, Asstt. Govt. Advocate and Mr. D.K. Siwakoti,
Advocate for the State.

O R D E R

(04.08.2015)

SUNIL KUMAR SINHA, C.J.

1. The short question raised for consideration is :-

***What Court-fees is required to be paid in the State of
Sikkim on the Memorandum of Appeal filed under
Section 173 of the Motor Vehicles Act, 1988?***

2. The Appellant/victim filed an application under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act, 1988”), claiming compensation for the personal injuries sustained by him in a motor accident on 26.02.2014. He was granted exemption from payment of Court-fees on the said application under Rule 267(2) of the Sikkim Motor Vehicles Rules, 1991 (hereinafter referred to as “the Sikkim Rules, 1991”). His claim petition was dismissed by the Claims Tribunal. Against it, he has filed MAC Appeal No.24/2014 under Section 173 of the Act, 1988. He has also filed an interim application (CMA No.402/2014) along with the appeal, seeking further exemption from payment of Court-fees on the memorandum of appeal, which, according to the Appellant, would be *ad valorem* in terms of Rule 267 of the Sikkim Rules, 1991. The question, therefore, is whether an *ad valorem* Court-fee would be required to be paid by an Appellant on the Memorandum of Appeal filed under Section 173 of the Act, 1988 in terms of the above Rule 267, or, it would not be required so. Since the matter relating to payment of Court-fees was raised, the State Government was also called upon and the Additional Advocate General appeared before this Court and assisted me in taking this decision.

3. I have heard learned Counsel for the parties.

4. Chapter XII of the Act, 1988 deals with Claims Tribunals. Section 165, falling as first section in this Chapter, deals with constitution of the Motor Accidents Claims Tribunal and Section 166 deals with filing of an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165. Many provisions, thereafter, have been provided in this Chapter regarding the procedure and powers of Claims Tribunals and Award of compensation

as also interest, and ultimately, the last section in this Chapter, i.e. Section 176, gives power to the State Government to make rules. It provides that a State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and, in particular, such rules may provide for all or any of the matters, namely:-

- (a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;
- (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;
- (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;
- (d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and
- (e) any other matter which is to be, or may be, prescribed.

5. In exercise of the powers conferred by Section 176 of the Act, 1988 and many other sections, the State Government of Sikkim vide Notification No.1(48)75-76/89-90/15 dated 28.12.1991 made rules, namely, the Sikkim Motor Vehicles Rules, 1991, which came into effect from the above date of its publication.

6. Chapter-VIII of the Rules, 1991, deals with establishment of the Claims Tribunals. Rule 247, falling under this chapter, provides that every application for payment of compensation made under Section 166 shall be made in Form SKV-70 and shall be accompanied by the fee prescribed therefor in Rule 267. Rule 267, therefore, assumes importance, which, we quote for ready reference: -

“267. Fees. – (1) Every application under sub-section (1) of the Act for payment of compensation shall be accompanied by a fee in the form of court fee stamps as specified below;-

(a) if the claims is confined to special damage, only one rupee;-

(b) if the claim includes general damages also, an ad valorem fee at the following rates, on the aggregate of the claims for special and general damages;-

Amount of claim	Amount of court fee
Upto Rs.10,000	- Ten Rupees.
From Rs.10,000 to 50,000	- ¼% of the amount of claim.
From Rs.50,000 to 1,00,000	- ½% of the amount of claim.
Above Rs.1,00,000	- 1% of the amount of claim.

Explanation :- For the purposes of this sub-rule:-

(i) “Special damage” is one which has to be specially pleaded and proved. It consists of out of pocket expenses and loss of earning incurred down to the date of trial, and is general capable of exact substantial calculations; and

(ii) “General damages” is one which the law implies and which is not specially pleaded. It includes compensation for pain and suffering and the like and if the injuries suffered are such as to lead to continuing or permanent disability compensation for loss of earning power.

(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 judgment is obtained.”

7. A bare perusal of Rule 267 would make it clear that the same is made applicable to a claim petition filed under Section 166 and an *ad valorem* Court-fees, in the above manner, is being levied and the practice in the State is that the same Court-fees is also being levied on the claim petitions filed under Section 163A of the Act, 1988. Thus, the provisions for payment of Court-fees under Rule 267 are very clear which also provide discretion to the Claims Tribunals to exempt a party from the payment of Court-fees prescribed under sub-rule (1). However, there is no provision regarding payment of Court-fees on memorandum of appeal filed under Section 173 of the Act, 1988.

8. Mr. Rai, learned Senior Counsel appearing on behalf of the Appellant, has argued that same provisions may be held applicable in cases of appeals, because, the appeals are continuation of the original proceedings and, here also, if an Appellant makes a prayer, exemption may be granted.

9. He argued this on the logic of a 'Decree' which is passed by a Civil Court under the Code of Civil Procedure, 1908. It may be noted that the 'Awards' passed by the Tribunals under the Act, 1988 are not 'Decrees' or 'Orders' under the Code of Civil Procedure, 1908, though they are final decisions having incidents of a 'Decree' and the said logic would not be applicable. In other States, where the provisions of the Court-fees Act, 1870 are applicable, the Court-fees on memorandum of appeal, filed under Section 173 of the Act, 1988, are being levied under Schedule II, Article 11 of the Court-fees Act, 1870, subject to certain variations by rules, i.e. to say, the Court-fees are being levied taking such memorandum of appeal being filed not against a 'Decree' or an 'Order' having the force of a 'Decree'.

10. The Court-fees Act, 1870 has not been adopted in the State of Sikkim. Here, various notifications like Notification No.1933/J dated 31.03.1921, Sikkim Court-fees and Stamps on Documents Rules, 1928 amending the aforesaid notification, which came into force from 01.08.1928, have remained in force. The Sikkim Court-fees and Stamps on Documents Rules, 1928 was further amended by the Sikkim Court-fees and Stamps on Documents (Amendment) Act, 2002 with effect from 10.04.2002 and an other Amendment Act, i.e. the Sikkim Court-fees and Stamps on Documents (Amendment) Act, 2013 came into force but even after commencement of the Act, 1988, the subsequent amendment rules

did not speak about the Court-fees to be paid on memorandum of appeal under the Act, 1988 or on an appeal which may arise against an 'Award' which does not amount to 'Decree' or an 'Order' having the force of a 'Decree'. It appears that the Legislature, while making rules with relation to payment of Court-fees on the claim petition in the above manner, in all its wisdom, deliberately brought no legislation for payment of Court-fees on memorandum of appeals under the Act, 1988 because it was clear that the 'Awards' passed under the Act, 1988 are not 'Decrees' and the appeals filed against such 'Awards' would not be different than ordinary appeals, filed against the 'Orders' passed under the Code of Civil Procedure, 1908, for which fixed Court-fees would be required to be paid.

11. All above discussions make it abundantly clear that at least no *ad valorem* Court-fees would be required to be paid on the memorandum of appeal filed under Section 173 of the Act, 1988.

12. In ***Jas Bahadur Rai v. Putra Dhan Rai : 1978 (3) SLJ***, considering applicability of Indian Laws to the State of Sikkim, it was held that when a point for decision was not covered by the provision of any law in force in Sikkim, the Courts in Sikkim, from long before its incorporation in the Union of India, have followed the principles of the laws in force in India in deciding such a point, if such principles appeared to them to be based on or in consonance with the principles of justice, equity and good conscience.

13. If we take up this logic in relation to the Court-fees Act, 1870 and apply the principles of justice, equity and good conscience, taking that the 'Awards' passed by the Tribunals are not 'Decrees' or 'Orders' having the force of 'Decrees', on this logic also, a fixed Court-fee only

would be required to be affixed on the memorandum of appeals filed under Section 173 of the Act, 1988.

14. The Sikkim High Court (Practice and Procedure) Rules 2011 vide Part A (b) prescribes General Rules for Interlocutory or Miscellaneous Applications and Affidavits. According to Rule 19, falling in this Part, it has been provided that all applications to be filed in the High Court shall be in the English language and they shall be duly stamped with a court fee label of Rs.10/-. It is, on this provision, all applications filed in the High Court are stamped with a Court-fee label amounting to Rs.10/- and the same practice is prevailing so far as the Court-fees on memorandum of appeals filed under Order XLIII, Rule 1 of the Code of Civil Procedure, 1908 are concerned.

15. Thus, I am of the view that unless some rules are framed in this regard, a court fee of Rs.10/- would be required to be paid on the memorandum of appeal filed under Section 173 of the Act, 1988 and, in case, the appeal is filed by the claimants, who got exemption under Rule 267(2) of the Sikkim Rules, 1991, and is allowed, they shall be liable to pay the prescribed fees in terms of the Rule 267 of the Sikkim Rules, 1991.

16. CM Appl. No. 402 of 2014 is disposed of in the above terms with no order as to costs.

(Sunil Kumar Sinha)
Chief Justice
04.08.2015

Approved for Reporting : Yes/~~No.~~
Internet : Yes/~~No.~~