
(2005) 04 BOM CK 0117
In the Bombay High Court

Sumitradevi Mahipal Kureel

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2007) 2 ACC 693

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Judgement

B.P. Dharmadhikari, J.—This revision application under Rule 4(v) of Chapter V of Bombay High Court Appellate Side Rules, 1960 challenges the order of Taxing Officer of High Court Bench at Nagpur dated 22.8.2003 in First Appeal Stamp No. 14634 of 2003 holding that appellant has to pay Court-fee on memo of appeal filed by her u/s 23 of Railway Claims Tribunal Act, 1987. The Taxing Officer has relied upon judgment of this Court in Betel Stores Vs. State of Maharashtra, and has found that the Court-fee is payable either under Article 3 of Bombay Court-Fees Act, 1959 treating the decision of Railway Claims Tribunal to be an award or under Article 1 of Bombay Court-Fees Act, 1959 which prescribes ad valorem Court-fees depending upon the valuation of the suit. He has recorded that in either case there is no difference in the amount of Court-fee required to be paid on such memo of appeal.

2. The appellant in First Appeal Stamp No. 14634 of 2003 and applicant in this civil revision application Sumitradevi was travelling by Kushinagar Express from Kalyan to Kanpur Central on 7.1.2002 when she met with accident at about 7 a.m. in which she lost both legs. Her case is that she entered reserved compartment with permission of one train ticket examiner and at Bhusawal another TTE in plain clothes objected and pushed her out of said compartment from moving train because of which her both legs came under the wheels of train and had to be amputated. She filed police complaint in this respect and also on 14.11.2002 filed her claim with Railway Claims Tribunal at Nagpur. She forwarded

this application by registered post acknowledgment due but did not receive any acknowledgment back. As the limitation was to expire she forwarded another claim application by R.P.A.D. and learned Railway Claims Tribunal at Nagpur dismissed both these applications with costs of Rs. 5,000 only on the sole ground that she preferred two applications for the same cause of action. Aggrieved by this, she filed above-mentioned first appeal before this Court and objection was raised by the office of High Court about Court-fee. The matter was placed before Additional Registrar (Judicial) and applicant filed a pursis pointing out that she is exempted from paying Court-fee at appellate stage as Court-fee was not required to be paid before Railway Claims Tribunal. The matter was referred to Taxing Officer of High Court here and the said officer upheld the office objection on 22.8.2003. The civil revision is directed against this order of Taxing Officer.

3. I have heard Mr. M.W. Harsulkar, Advocate for the revision applicant, Mr. Kaptan, Advocate for State Government, respondent No. 1 and Mr. P.S. Lambat, Advocate for Union of India, respondent No. 2.

4. Mr. Harsulkar, Advocate, argued that the conclusions and observations of the learned Taxing Officer are erroneous. Legislature has granted exemption from Court-fees before Railway Claims Tribunal by making provision for that purpose in Railway Claims Tribunal Act and as such the applicant is exempt from paying it even in appeal. He invites attention to Article 4 of Schedule I of Bombay Court-Fees Act to contend that when Court-fee is not payable on claim petition/application filed before Railway Claims Tribunal, the same cannot be demanded in appeal. He points out that Rule 6(1) of the Railway Claims Tribunal (Procedure) Rules, 1989 require payment of Court-fee only in matters other than the claim of compensation for death or injury to passengers. He states that the 1991 judgment of this Court in *Betel Stores v. State of Maharashtra* (supra), does not consider this position and as such Taxing Officer was wrong in placing reliance upon it. He states that the exemption available is to the passengers for personal injury while case considered *Betel Stores v. State of Maharashtra* (supra) was in relation to goods. It is his stand that decision of Railway Claims Tribunal is not an award and as such Article 3 of Schedule I of Bombay Court-Fees Act has no relevance. He states that the orders of Railway Claims Tribunal are not awards but only directions to Government to fulfil its obligation towards the travelling public. Every passenger is insured by Railways by levying certain amount on the railway ticket as insurance premium and the concerned Insurance Company has to honour the policy by effecting payment to the passenger or his relatives. The amount received by passenger is thus refund of the insurance claim. He invites attention to Section 20 of Bombay Court-Fees Act, particularly Sub-section (xiii) thereof to urge that when the applicant is recovering amount due to her from government, no Court-fee is required to be paid. He further makes it clear that the applicant never challenged the powers of Taxing Officer to decide the objection in relation to Court-fee. He also adds that the Registry/office of this Court did not demand Court-fee on such appeals between 1989 and 2003 and the demand is being raised only after the impugned decision of Taxing Officer. He

also points out order dated 19.9.1998 passed by Deputy Registrar of this Court in First Appeal No. 40 of 1998. He states that there it is expressly observed that as initially the claimant is not liable to pay Court-fee in claim against Railways, the said provision would be applicable to claimant in appeal also.

5. Mr. P.S. Lambat, Counsel for Union of India supports the arguments advanced by Mr. Harsulkar, Advocate and contends that exemption from Court-fee before the Railway Claims Tribunal is deliberate and same exemption must be made applicable to appeals filed before this Court.

6. Mr. Kaptan, Counsel for the State Government, contended that the appeal before High Court is not regulated by Railway Claims Tribunal Act but by Bombay Court-Fees Act. He states that exemption from Court-fee upon an application to Railway Claims Tribunal has got no relevance while filing appeal in the High Court. He states that the issue is squarely covered by 1991 judgment referred to above.

7. It will be appropriate to note down various legal provisions in this respect.

Rule 6 (1) of Railway Claims Tribunal (Procedure) Rules, 1989, is reproduced as under:

(6) Application fees for cases other than compensation for death or injury to passengers. (1) Every application made under Sub-section (1) of Section 16 for seeking relief in respect of matters, other than claim of compensation for death or injuries to passengers, shall be accompanied by a fee as specified in Schedule II.

Relevant provisions of Bombay Court-Fees Act, 1959 are as under:

Section 20. Exemption of certain documents. (1) Nothing contained in this Act shall render the following documents chargeable with any fee:

(xiii) Application of the payment of money due by government to the applicant.

Table of rates of ad valorem fees leviable on the institution of suits.

Schedule	I
-----	No.
Proper	fee
-----	1. Plaint
or memorandum when such One hundred rupees for one lakh of amount or value exceeds of appeal rupees and for every Rs. 10,000 (not otherwise provided for in this or part thereof. Act) or of cross-objection presented to any civil or revenue Court. 3. Plaint, application or petition A fee on the amount or value of (including memorandum of appeal), award sought to be set aside or to set aside or modified, any award modified, according to scale otherwise than under the Arbitration prescribed under Article 1. Act, 1940. 4. Plaint, application or petition (including The same fee as is leviable on a memorandum of appeal), which plaint in a suit to obtain the relief is capable of being treated as a suit, to	

granted in the decree or order, set aside a decree or order having the as the
case may be. force of a decree.

8. Insofar as arguments of Mr. Harsul-kar, Advocate, for exemption in view of Section 20(xiii) of Bombay Court-Fees Act are concerned, the necessary facts are already stated above and unless and until the entitlement of revision applicant for said amount is proved and recorded by the Railway Claims Tribunal, it cannot be said that amount is due by government to her. If the entitlement of revision applicant is in dispute, the money is not "due" and her appeal before this Court, therefore, cannot be exempted from payment of Court-fees. Here, the lower Tribunal has dismissed her claim petition and as such, while filing appeal, it cannot be said that amount was/is due to her. Reliance upon provisions of Section 20(xiii) is, therefore, misconceived and uncalled for.

9. Payment of Court-fee on such appeal in the light of Articles 1 and 3 of Bombay Court-Fees Act was considered by this Court in its judgment in *Betel Stores v. State of Maharashtra* (supra). Office of this Court there raised an objection that Court-fee paid on appeal u/s 23 of Railway Claims Tribunal Act is to be calculated as per Article 1 of Schedule I of Bombay Court-Fees Act, 1959 and demanded the deficit Court-fee of Rs. 15. After considering the various statutory provisions, in para 8 this Court has observed:

(8) The Railway Claims Tribunal Act, 1987, or the Rules made thereunder, do not provide as to how much Court-fee is to be paid on the memorandum of appeal to be presented to this Court u/s 23 of the Act and the provisions of Bombay Court-Fees Act, 1959 alone, therefore, govern the payment of the Court-fees on the memorandum of appeals to be presented before this Court u/s 23 of the Act. As pointed out hereinabove the fees are chargeable as per the provisions of First or Second Schedule of the Act. Article 1 of Schedule I which relates to ad valorem fees deals with the Court-fees payable on the plaint or memorandum of appeal not otherwise provided for in this Act or on cross-objection presented to any civil or regular Court. If there is no specific provision in relation to the memorandum of appeal to be filed u/s 23 of the Act, the memorandum of appeal presented to this Court u/s 23 of the Act would be squarely covered by provisions of Article 1 and ad valorem fees as prescribed would, therefore, be liable to be paid. However, Article 3 of the Schedule I provides for the fees payable on plaint, application or petition (including the memorandum of appeal) to set aside or modify any award otherwise than under the Arbitration Act, 1940 and the fee payable is the fee on the amount or value of the award sought to be set aside or modified according to the scale prescribed under Article 1. It, therefore, matters little whether the Court-fee is payable either under Article 1 or Article 3 of Schedule I of Bombay Court-Fees Act, the Court-fee payable under both the Articles being the same. The order of the Tribunal u/s 16(1) of the Act will be an award within the meaning of the term award in Article 3 of Schedule I. The Court-fee payable on the memorandum of appeal u/s 23 of the Act would, therefore, be

governed by the provisions of Article 3 of Schedule I of Bombay Court-Fees Act, 1959. As per Article 3 of Schedule I of the Court-fee payable on the memorandum of appeal is the fee on the amount or value of the award sought to be set aside or modified, according to the scale prescribed under Article 1 and the appellant was required to pay the Court-fee accordingly.

The revision application of claimant was, therefore, dismissed and the office objection was upheld.

9-A. Mr. Harsulkar, Advocate, has contended that the judgment in Betel Stores case, 1992 ACJ 89 (Bombay), does not consider the case of a passenger who claims compensation for personal injury but it considers the situation in which compensation is claimed for goods. However, para 5 of this judgment does not support this argument and it is not a distinguishing feature at all. He has further stated that Article 4 of Schedule I of Bombay Court-Fees Act is attracted and not Article 3. He contends that decision rendered by Railway Claims Tribunal is not an award but a decree or a order having the force of decree. However, this argument is also misconceived. It is not demonstrated why such determination by Railway Claims Tribunal is not award. Further, no reason whatsoever has been put forth to enable this Court to take different view of the matter in the light of reported judgment (*supra*). His argument is as no Court-fee is required to be paid while instituting application/claim before Railway Claims Tribunal; no Court-fee is required to be paid even in appeal. Substantive part of Article 4 deals with four types of documents, viz., plaint, application, petition or memorandum of appeal which is capable of being treated as a suit. Thus, though the application, petition or such memorandum of appeal contemplated are not actually "suit", still they are capable of being treated as suit. The purpose of such plaint, application, petition or memorandum of appeal should be to set aside a decree or order having force of decree. Thus substantive part creates a sort of fiction in relation to these four documents. However, its latter part, which prescribes the proper Court-fee does not contain any such fiction. It is clear and unambiguous. Court-fee payable is stated to be the same as is leviable on the plaint in a suit to obtain the relief granted in the decree or order, as the case may be. Thus, this part does not create any confusion and states that Court-fee required to be paid for institution of civil suit in the civil Court to obtain relief is the same Court-fee even in relation to four documents referred to earlier in substantive part of Article 4. The test applied for calculation of proper Court-fee under Article 4 is not whether applicant was required to pay any Court-fee while instituting application/claim before Railway Claims Tribunal. The test is what Court-fee she will be required to pay if she presents the same as suit before civil Court. Therefore, even if arguments of Mr. Harsulkar, Advocate, are accepted, that does not make any change in amount of Court-fee or liability therefor. Thus, practically, even if it is presumed that Article 3 of Schedule I has no application, still, it will not make any difference for the revision applicant and she will have to pay same Court-fee. The argument of the revision applicant is, therefore, misconceived and deserves to be rejected.

10. In this background, when the order dated 19.9.1998 passed by Deputy Registrar of this Court in First Appeal No. 40 of 1998 is seen, the said authority has held that Railways are required to pay Court-fee while filing appeal. The observation that exemption of Court-fee is applicable to the claimant in appeal also appears to have been withdrawn by latter part of the order in handwriting by Incharge Additional Registrar on same date after hearing Advocate for appellant therein. It mentions that previous order dated 19.9.1998 is to be treated as cancelled. However, in view of the 1991 judgment (supra) and the discussion above, that order does not need more consideration. No case is made out for interfering with the impugned order dated 22.8.2003. The said order of Taxing Officer is just and proper. There is no merit in this revision. It is dismissed without any order as to costs.