
(2003) 07 KAR CK 0028
In the Karnataka High Court
Case No : C.R.P. No. 1406 of 2002

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Jayalakshmi and Others

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Karnataka Civil Practice Rules, 1967 — Rule 100A, 100F

Citation : (2003) ILR (Kar) 4264 : (2004) 1 KCCR 13

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; S. Susheela, for the Respondent

Final Decision : Allowed

Judgement

Sreedhar Rao, J.—The revision rises an intricate and interesting question of law relating to the entitlement of an Advocate fee in an Execution proceedings in respect of the award passed by the Motor Accident Claims Tribunal. A compensation of Rs. 2,90,000/- was awarded with interest at 6% and the Advocate Fee was fixed at Rs. 500/-. In the Execution proceedings, there was total claim for Rs 3,59,467/ - including the Advocate's Fee of Rs. 500/- granted by the trial Court and also includes the Advocate Fee claimed for Rs. 8,080/- payable towards the execution case. The Executing Court upheld the contention of the decree holder that the Advocate fee of Rs. 8,080/- claimed in Execution case is valid and proper and accordingly awarded the same. The Insurance Company, aggrieved by the order has preferred this petition.

2. The relevant provisions of Rule 100 (a) to (f) of the Karnataka Rules of Practice are extracted hereunder for a convenient reference:-

"100 (Advocate's fee) to be included in the costs awarded by the Court to a party in any suit or other proceeding shall be computed in the manner prescribed hereunder-

(a) In original suits, the fee shall be calculated on the value or the subject matter of the suit, which shall be the same as that prescribed by the Karnataka Court Fees and Suits Valuation Act, 1958, for determining the jurisdiction of the Court, according to the following scales-

Suit Claim

On the first sum of Rs. 5,000/-

10 per cent of the suit claim

On the sum exceeding 5000/- upto Rs. 10,000/-

Rs. 500/- + 7 1/2 per cent on Rs. the amount exceeding Rs.5,000/-

Exceeding Rs. 10,000/-Upto Rs. 20,000/-

Rs. 875/- + 5 1/2 percent on the amount exceeding Rs. 10,000/-

Exceeding Rs. 20,000/-Upto Rs. 50,000/-

Rs. 1,425/- + 4 per cent on the amount exceeding Rs. 20,000/-

Exceeding Rs. 50,000/-Rs. 1,00,000

Rs. 2,625/- + 3 per cent on Upto the amount exceeding Rs. 50,000

Above Rs. 1,00,000/-

Rs. 4,125/- + 1 1/4 per cent on the Amount which exceeds Rs. 1,00,000/- subject to a Maximum of Rs. 15,000/-

Provided that the fee allowed in any suit shall not be less than Rs. 250/- unless the Court orders otherwise.

(b) In a Regular Appeal, the fee shall be calculated according to the scale set out in clause (a) above on the value or the amount of the subject matter in dispute in Appeal.

Provided that the fee allowed in any Regular Appeal shall not be less than Rs. 350 unless the Court orders otherwise.

(c) In Small Cause Suit, the fee shall be 7 per cent of the value of the amount of the claim as set forth in the plaint, subject to a minimum of Rs. 100.

(d) In the Execution case, the fee shall be calculated as follows:

(i) On the first application at 50 per cent of the fee calculated at the rate specified in clause (a) above on the amount of money or value of the relief claimed in the application.

(ii) No fee shall be payable on any subsequent application unless it is contested, in which case, the fee shall be calculated at 25 cent of the fee calculated at the rate specified in clause (a) above on the amount of money or value of the relief

claimed in the application;

(e) In an Execution Appeal, the fee payable shall be one-fourth the fee, which would have been payable if the appeal were a regular Appeal.

(f) In other proceedings, the fee shall be fixed by the Court regard being had to the time occupied in the hearing of the case and the nature of the questions raised, but subject to the minimum and maximum prescribed hereunder. If, in any case coming under this clause the Court awards costs without fixing the Advocate's Fee, the Court shall be deemed to have awarded the minimum prescribed."

3. The Counsel for the respondent relied on a decision reported in the case of Shekhappa Vs. Assistant Commissioner and Land Acquisition Officer, Koppal and Another, Koppal to contend that under Clause (d) of Rule 100 the decree holder would be entitled to 50% if the fee payable in the original proceedings. 50% of the fee is calculated on the amount of money and on the value of the relief claimed in the application. On that basis, submits that the fee of Rs. 8,080/- claimed is in accordance with law.

4. After carefully going through the decision and the provision of law in particular, clause (d) and (f) of Rule 100, I find that the provisions of clause (d) (i) makes a specific reference to the fee calculated at the rate specified in clause (a) on the amount of money or the value of the relief claimed in the application; thereby means that the fee payable in respect of original suits in clause (a) is made applicable for calculating the fee payable in an execution case relating to the suits. Clause (c) deals with execution appeals, Clause (F) is the general clause fixing the maximum and minimum fee in respect of proceedings under Land Acquisition Act, Motor Accident Claims Cases, Matrimonial Case, Guardians and Wards case, Probate and Succession Case, Insolvency Case, Arbitration Case and Karnataka Rent Control Act etc.,

6. A meticulous reading of clause (a), (d) and (f) would show that Clause (a) exclusively deals with the original suits relating to the claim for money. But, for any other proceedings other than the suit for claim of money, clause (f) would be applicable. In the cited decision, the execution case pertains to the year 1997 and pertains to the period earlier to the amended provisions of clause (f). The amended provision came into effect on 28.1.1999. Therefore the said decision has no application to the cases arising subsequent to 28.1.1999. The minimum and maximum fee payable to the proceedings other than the suit is mentioned in clause (f) in tabular form. There is no provision made for execution case. Therefore, first part of clause (f) would apply and it is in the discretion of the Court to fix a reasonable fee, depending upon the nature of claim and volume of time occupied for adjudication. In the present case, under the original proceedings, a sum of Rs. 500/- has been granted. Therefore, to grant anything in excess of Rs. 500/- would be excessive and unreasonable.

7. Keeping in view of the provisions of clause (f) of Rule 100 of the Karnataka

Civil Rules of Practice, the Advocate's fee is fixed at Rs. 250/- and the excess advocate fee fixed by the Executing Court is modified.

9. Accordingly, the revision is allowed and the order of the Executing Court is modified.