

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

JUSTICE AMAR NATH (KESHARWANI)

MISC. APPEAL No. 2927 OF 2022

BETWEEN:-

1- SHRI GIRAJA SHANKAR SHARMA S/O SATYANARAYAN SHARMA, AGED ABOUT 55 YEARS, VILLAGE BHANDI P.O. KHUTAR DISTRICT TAHSIL SINGRAULI M.P. CURRENT ADDRESS H.N. 935 AMANPUR NARSINGH WARD MADANMAHAL JABALPUR M.P. (MADHYA PRADESH)

2- SMT.URMILA SHARMA W/O GIRJA SHANKAR SHARMA, AGED ABOUT 54 YEARS, RESIDENT OF VILLAGE BHANDI P.O. KHUTAR DISTRICT TEHSIL SINGRAULI MP CURRENT ADDRESS H.N. 935 AMANPUR NARSINGH WARD MADANMAHAL JABALPUR (MP) (MADHYA PRADESH)

3- NITESH KUMAR SHARMA S/O GIRAJA SHANKAR SHARMA, AGED ABOUT 21 YEARS, RESIDENT OF VILLAGE BHANDI P.O. KHUTAR DISTRICT TEHSIL SINGRAULI MP CURRENT ADDRESS H.N. 935 AMANPUR NARSINGH WARD MADANMAHAL JABALPUR (MP) (MADHYA PRADESH)

.....APPELLANTS

(SHRI V.P. SHAH - ADVOCATE FOR APPELLANTS)

AND

1- NATIONAL INSURANCE COMPANY LIMITED THROUGH BRANCH MANAGER ADDRESS BRANCH OFFICE WAIDHAN SHIVGANGA COMPLEX TALI POST WAIDHAN DISTRICT SINGRAULI M.P. BRANCH OFFICE NO. 2 MARHOTEL KARAMCHAND CHOWK JABALPUR M.P. (INSURANCE COMPANY OF VEHICLE NO. MP 66 MA 9692 (MADHYA PRADESH)

2- RAMASHANKAR SHAHWAL S/O JEETALAL
OCCUPATION: OWNER OF VEHICLE NO.MP 66
MA 9692 R/O PREETI MEDICAL STORE WARD NO.
40 WIADHAN DISTRICT SINGRAULI (MADHYA
PRADESH)

3- SATYADEV SHAH S/O SHRI VIJAY KUMAR
SHAH, AGED ABOUT 45 YEARS, OCCUPATION:
DRIVER OF VEHICLE NO. MP 66 MA 9692 R/O
VILLAGE CHITARWAI KALA POST KHUTAR
POLICE STATION WADHAN DISTRICT TEHSIL
SINGRAULI MP (MADHYA PRADESH)

.....RESPONDENTS

.....
Reserved on : 08/05/2023

Pronounced on : 12/05/2023
.....

This Misc. Appeal having been heard and reserved for orders, coming on for pronouncement on this day, Justice Amar Nath (Kesharwani) pronounced the following:

O R D E R

Heard on I.A. No.10710 of 2022, an application for ignoring the default of 2.5% Court fee as pointed out by the Registry.

2. Learned counsel for the appellants submits that as per the provision of the Court Fee (Madhya Pradesh Amendment) Act, 2012, court fee ought to be paid 2.5% of the enhanced amount, awarded in the Appeal and not on the amount which is claimed in appeal and Registry of this Court has wrongly raised objection on the proportionate Court fee and demanding 2.5% court fee on the claimed amount in appeal which is against the spirit of law.

3. Learned counsel for the appellant submits that the enhanced amount cannot be determined earlier the judgment, but only after the judgment and only in cases where enhancement is made, then in that

case only the court fee has to be paid and that too on the enhanced amount and in case enhancement is not done, then no court fee is required to be paid.

4. In support of his arguments learned counsel for the appellant placed reliance on the orders passed by coordinate Bench of this Court in **MA No.1911 of 2010 (Hemraj and another Vs. Pradeep & another)** decided on 06/11/2012 (**Annexure A-2**), **MA No.3612 of 2010 (Galiya and others Vs. Darbar and others)** decided on 15/12/2011 reported in 2012 (2) ACCD 608 (MP) (**Annexure A-3**), **MA No.2056 of 2010 (Smt. Nilofar Anjum and another Vs. Mohd. Ashif & another)** decided on 14/12/2021 reported in 2012 (2) ACCD 1017 (MP) (**Annexure A-4**), **MA No.3147 of 2010 (Badrilal Vs. Harikishan and others)** decided on 16/12/2011 reported in 2012 (2) ACCD 1049 (MP) (**Annexure A-5**), **MA No.808 of 2011 (Smt. Leelabai and others Vs. Ramesh & others)** decided on 14/12/2011 reported in 2012 (2) ACCD 1023 (MP) (**Annexure A-6**), **MA No.11 of 2010 (Dilip Vs. Jakir Mohd. And others)** decided 14.12.2011 reported in 2012 (2) ACCD 1022 (MP) (**Annexure A-7**), **MA No.2015 of 2011 (Rakesh Vs. Sunil & others)** decided on 16/12/2011 reported in 2012 (2) ACCD 1018 (MP) (**Annexure A-8**), **MA No.4020 and 4261 of 2011 (Smt. Savita and others Vs. Shree Kumar Dhurve & others)** decided on 20.12.2011 reported in 2012 (2) ACCD 589 (MP) (**Annexure A-9**), **MA No.852 of 2015 (Preetam Lal Garg and others Vs. Vijay Kumar Gujrati & others)** decided on 21.12.2016 (**Annexure A-10**), **MA No.851 of 2015 (Arun Kumar Dubey Vs. Vijay Kumar Gujrati & others)** decided on 21.12.2016 (**Annexure A-11**), **MA No.88 of 2018 (Smt. Meera Sahu Vs. Deepchand)** decided on 08.03.2018, **MA No.907 of 2020 (Smt. Aanny @ and others Vs.**

the Oriental Insurance Co.Ltd. And others) decided on 17.02.2020 and Basid vs. K.C. Sanu 2015 ACJ 1856 (High Court of Kerala at Ernakulam) (Annexure A-12).

5. I have considered the argument advanced by the learned counsel for the appellant and perused the citations relied on by the learned counsel for the appellant. Citations as mentioned in the above para No.4 which were marked as Annexures A-2 to A-11 and orders passed in MA No.88 of 2018 and MA No.907 of 2020, this Court did not lay down any principles in above cases that appellants are required to pay court fees only on that amount which was enhanced by the Court after adjudication of the appeal, but those were just isolated events and no such law has been laid down in those cases.

6. Division benches and co-ordinate benches of this Court in various cases passed the orders where this question has been comprehensively dealt with, of which, some are reproduced as below:-

(I) MA No.781 of 2015 Ram Ratan Singh & others vs. Janakchand Rana & another vide order dated, **06.09.2017** passed the following :-

“Heard on I.A.No.8831/2017, which is an application for ignoring the objection raised by the registry of this court regarding payment of deficit Court fees.

Brief facts of the case which are relevant for disposal of aforesaid application are that the applicants have filed this Miscellaneous Appeal against the award dated 18/10/2014 passed by IInd Additional MACT, Katni in Claim Case No.268/2013 for enhancement of compensation awarded by the Claims Tribunal to the applicants. This Miscellaneous Appeal is for enhancement of a sum of Rs.1,00,000/-. Office put the objection that appeal is not maintainable without payment of Court fees on that enhanced amount i.e. Rs.1,00,000/-. Present application has been filed for overruling that objection.

Learned counsel for the appellants submitted that according to Article 11 of Schedule II of the Court Fees Act

2.5% Court fees should be paid on the enhanced amount. The amount claimed by the appellants in the appeal cannot be called as enhanced amount but the enhanced amount will be such as would be given by the Court after adjudication of the claim of the appellants. Registry wrongly demanded 2.5% Court fees on the amount which is claimed by the appellants in the memo of appeal. There is no certainty as to what amount will be awarded by the court. Appellants are only required to pay court fee on the amount which will be determined as enhanced amount by this court at the time of judgement of this appeal. So appellant may be allowed to make payment of Court fee at the time of final decision of the appeal on enhanced compensation which may be determined by the court.

In this regard learned counsel also placed reliance on this court's judgments passed in **MA.No.1911/2010 (Hemraj Basore Vs. Pradeep Yadav & another)** vide order dated 06/11/2012, **Galiya & others Vs. Darbar & others, 2012(2) ACCD 608 (MP)**, **Smt. Nilofar Anjum & another Vs. Mohd. Aasif & another, 2012 (2) ACCD 1017 (MP)**, **Badrilal Vs. Harikishan & others, 2012 (2) ACCD 1049 (MP)**, **Smt. Leelabai & others Vs. Ramesh & others 2012 (2) ACCD 1023 (MP)**, **Dilip Vs. Jakir Mohammad & others, 2012 (2) ACCD 1022 (MP)**, **Rakesh Vs. Sunil & others, 2012 (2) ACCD 1018 (MP)**, **Savita Vs. Shri Kumar Dhruve, 2012 (2) ACCD 589 (MP)**, **Preetam Lal Garg & others Vs. Vijay Kumar Gujrati & others, passed in MA.No.852/2015 vide order dated 21/12/2016**, **Arun Kumar Dubey Vs Vijay Kumar Guyrati and others passed in MA.No.851/2015 vide order dated 21/12/2016** and kerala high court judgement passed in **Basid Vs K.C. Sanu** reported in **2015 ACJ 1856**.

This court has gone through the record and arguments advanced by the counsel of the appellants. This appeal has been filled by the appellants u/s 173 Motor Vehicle Act. The memo of appeal preferred u/s 173 Motor Vehicle Act is required to be affixed with Court Fees as per Article 11 of Schedule II of Court fees Act. Which reads as thus:-

“(a) when presented to the High Court-

(i) By the claimant for enhancement of 2.5 percent of the amount of award passed by the Motor enhanced amount Accident Claims Tribunal. Claimed in appeal

From the wordings of the provisions of Article 11 of Schedule II of Court fees Act.” 2.5 percent of the

enhanced amount claimed in appeal” it is clear that court fees will be paid on that enhanced amount which is claimed by the appellants in their appeal memo and not on the amount which will be determined by the court after adjudication of the claim of the appellants and the court fees is payable at the time of presentation of the appeal not after judgement.

Section 4 of the Court Fees Act, 1870 bars the court from receiving plaint/appeal if it does not bear the proper court fees. Although Section 149 CPC acts as an exception to the said bar and enables the court to permit the plaintiff to pay the deficit court fees at a subsequent stage. But this section also does not give unfettered power to court for giving time to applicant for paying court fee.

Apex court in the case of **A. Nawab John & Ors vs V. N. Subramaniam** reported in **(2012) 7 SCC 738** para 23 of his judgement observed as thus:-

“the Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.”

Order 7 rule 11 of CPC also provides that the plaint shall be rejected (c) “where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so”

The Judgements of this court passed in **MA.No.1911/2010 (Hemraj Basore Vs. Pradeep Yadav & another), Galiya & others Vs. Darbar & others, Smt.Nilofar Anjum & another Vs. Mohd. Aasif & another, Badrilal Vs. Harikishan & others, Smt. Leelabai & others Vs. Ramesh & others, Dilip Vs. Jakir Mohammad & others, Rakesh Vs. Sunil & others, Savita Vs. Shri Kumar Dhruve**, (supra) relied by the learned counsel of the applicants do not much help to the applicants. In the aforementioned cases this court did not lay down any principle that appellants are required to pay court fee only on that amount which enhanced by the court after adjudication of appeal and court fee will be paid after

adjudication of the appeal by this court. On the contrary the above cases were entertained by the registry of this court without payment of requisite court fees. So in the cases, the court had given directions at the time of judgement that the claimant shall pay the court fees on the enhanced amount.

Although this court in the case of **Preetam Lal Garg & others Vs. Vijay Kumar Gujrati & others, MA.No.852/2015** and **Arun Kumar Dubey Vs Vijay Kumar Gujrati and others MA.No.851/2015** vide order dated **21/12/2016** gave the permission to the appellants of these cases that they will be permitted to pay court fees on the enhanced amount after judgement in the appeal. But in these cases also this court did not lay down any principle that appellants are required to pay court fee only on the amount enhanced by the court in the appeal and that the court fee will be paid after adjudication of the appeal by the court. The orders are limited for these cases only.

Likewise the Kerala High Court judgement passed in the case of **Basid Vs K.C. Sanu** (Supra) is also not on the point of payment of court fees in the appeal.

On the other hand the division bench of this court in the case of **Dr. Hajarilal Agrawal vs State Of Madhya Pradesh And Ors. 2006 (4) MPHT 237** turning down the prayer of appellant that appellant may be allowed to make payment of Court fee at the time of final decision of the appeal on compensation which may be determined by the court and held -Court fees is payable on valuation of appeal. The amount for which adjudication is sought not on determined, on the initial stage where Court-fee is required to be paid”.

The Apex Court in the case of **K.C. Skaria Vs. Govt. of State of Kerala & Anr.** reported in . **AIR 2006 SC 811** held that non-payment of Court fees cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that person suing did not know the exact amount due to him as that will open the floodgates for converting several types of money claims into suits for accounts to avoid payment of court fees at the time of institution.

From the above discussion it is clear that the appeal is not maintainable without payment of Court fees on the claimed enhanced amount i.e. Rs.1,00,000/-. If the claimants are unable to pay the Court fee on account of indigency, they can always seek the leave to

file an appeal as an indigent person under Order 44 of the Code of Civil Procedure, 1908.

Hence I.A.No.8831/2017 is hereby rejected sans merit and appellants are directed to pay requisite court fees within fifteen days failing which this appeal shall stand rejected without reference to the court.

On payment of requisite court fees by the appellants within fifteen days matter be listed for admission in due course.

(II) In the case of Smt. Jalso Bai and others vs. Surendra Kumar & others in MA.No.1057/2021 vide order dated 07.06.2021 has passed the following :

Heard on I.A.No.3211/2021, which is an application for ignoring the objection raised by the registry of this Court regarding payment of deficit Court fees.

Brief facts of the case which are relevant for disposal of aforesaid application are that the appellants filed this Miscellaneous Appeal against the award dated 22/01/2021 passed by MACT, Mandla in Claim Case No.778/2018 for enhancement of compensation awarded by the Claims Tribunal to the applicants. This Miscellaneous Appeal is for enhancement of a sum of Rs.6,00,000/-. Office put the objection that appeal is not maintainable without payment of Court fees on that enhanced amount i.e. Rs.6,00,000/-.

Present application has been filed for overruling that objection.

Learned counsel for the appellants submitted that according to Article 11 of Schedule II of the Court Fees Act 2.5% Court fees should be paid on the enhanced amount. The amount claimed by the appellants in the appeal cannot be called as enhanced amount, but the enhanced amount will be such as would be given by the Court after adjudication of the claim of the appellants. Registry wrongly demanded 2.5% Court fees on the amount which is claimed by the appellants in the memo of appeal. There is no certainty as to what amount will be awarded by the Court. Appellants are only required to pay Court fee on the amount which will be determined as enhanced amount by this Court at the time of judgement of this appeal. So

appellants may be allowed to make payment of Court fee at the time of final decision of the appeal on enhanced compensation, which may be determined by the Court. In this regard learned counsel also placed reliance on this Court's judgments passed in *Preetam Lal Garg Vs. Vijay Kumar Gujrati*, passed in MA.No.852/2015 vide order dated 21/12/2016, *Smt. Sushma Dhurve & Others Vs. Dayal Singh & Others* passed in MA.No.5539/2019 vide order dated 19/12/2019, *Suresh Maravi Vs. Akash Singh Rajput & Others* passed in MA.No.1996/2020 vide order dated 10/09/2020 and *Ravi Shankar Vs. Arjun Lal & Others* passed in M.A.No.2187/2020 vide order dated 23/09/2020.

This Court has gone through the record and arguments advanced by the counsel of the appellants. This appeal has been filed by the appellants u/s 173 Motor Vehicle Act. The memo of appeal preferred u/s 173 Motor Vehicle Act is required to be affixed with Court Fees as per Article 11 of Schedule II of Court fees Act, which reads as thus:-

(a) when presented to the High Court-

(i) By the claimant for enhancement of	2.5 percent of the
amount of award passed by the Motor	enhanced amount
Accident Claims Tribunal.	Claimed in appeal

From the wordings of the provisions of Article 11 of Schedule II of Court fees Act "**2.5 percent of the enhanced amount claimed in appeal**" it is clear that court fees will be paid on that enhanced amount which is claimed by the appellants in their appeal memo and not on the amount which will be determined by the Court after adjudication of the claim of the appellants and the court fees is payable at the time of presentation of the appeal not after judgement.

Section 4 of the Court Fees Act, 1870 bars the Court from receiving plaint/appeal if it does not bear the proper court fees. Although Section 149 CPC acts as an exception to the said bar and enables the Court to permit the plaintiff to pay the deficit Court fees at a subsequent stage. But this Section also does not give unfettered power to Court for giving time to applicant for paying Court fee.

Hon'ble Apex Court in the case of *A. Nawab John & Ors vs. V. N. Subramaniam, (2012) 7 SCC 738* in para 23 of its judgement observed as thus:-

"the Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation."

Order 7 rule 11 of CPC also provides that the plaint shall be rejected (c) "where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so."

The Judgements of this court passed in the case of *Smt. Sushma Dhurve & Others Vs. Dayal Singh & Others (MA.No.5539/2019)*, *Suresh Maravi Vs. Akash Singh Rajput & Others (MA.No.1996/2020)* (*supra*) relied by the learned counsel of the applicants do not much help to the appellants. In the aforementioned cases this Court did not lay down any principle that appellants are required to pay court fee only on that amount which enhanced by the court after adjudication of appeal and court fee will be paid after adjudication of the appeal by this court.

Although, this Court in the case of *Preetam Lal Garg Vs. Vijay Kumar Gujrati, (MA.No.852/2015)* and *Ravi Shankar Vs. Arjun Lal & Others (M.A.No.2187/2020)* this Court gave the permission to the appellants of these cases that they will be permitted to pay court fees on the enhanced amount after judgement in the appeal. But in these cases also this court did not lay down any principle that appellants are required to pay court fee only on the amount enhanced by the court in the appeal and that the court fee will be paid after adjudication of the appeal by the court. The orders are limited for these cases only.

On the other hand the Division Bench of this Court in the case of *Dr. Hajarilal Agrawal vs State Of Madhya Pradesh And Ors. 2006 (4) MPHT 237* turning down the prayer of appellant that appellant may be allowed to make payment of Court fee at the time of final decision of the appeal on compensation which may be determined by the court and held -

Court fees is payable on valuation of appeal. The amount for which adjudication is sought not on determined, on the initial stage where Court-fee is required to be paid.

Hon'ble Apex Court in the case of *K.C. Skaria Vs. Govt. of State of Kerala & Anr. reported in AIR 2006 SC 811* held that non-payment of Court fees cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that person suing did not know the exact amount due to him as that will open the floodgates for converting several types of money claims into suits for accounts to avoid payment of court fees at the time of institution.

From the above discussion it is clear that the appeal is not maintainable without payment of Court fees on the claimed enhanced amount i.e. Rs.6,00,000/-. If the claimants are unable to pay the Court fee on account of indigency, they can always seek the leave to file an appeal as an indigent person under Order 44 of the Code of Civil Procedure, 1908.

Hence I.A.No.3211/2021 is hereby rejected sans merit and appellants are directed to pay requisite Court fees within fifteen days, failing which this appeal shall stand rejected without reference to the Court.

On payment of requisite court fees by the appellants within fifteen days matter be listed for admission in due course.”

(III) In the case of Dharam Singh Masram vs. Sanjay Maravi & ors. in MA.No.1990/2020 vide order dated 07.01.2022 has held as under:

“Registry has put up a note that Court fees of Rs.5000/- on memo of appeal and Rs.20/- on vakalatnama is not paid.

Attention of this Court is also invited to orders passed in MA No.1057/2021 and MA No.781/2015. In MA No.1057/2021, Coordinate Bench of this Court vide order dated 07.06.2021 has held that appeal is not maintainable without payment of Court fees on claimed enhanced amount.

Learned counsel appearing for appellant has relied in the case of **Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others** reported in (2010) 13 SCC 336; **Kalabai Vs. Rashid Khan** reported in 2012 3 MPWN 71; and **State of Madhya Pradesh Vs. Rambihari** reported in 1993 1 MPWN 63.

Heard the counsel for the parties.

In case of **Kalabai (Supra)** an observation was made that court fees is payable on enhanced amount and after payment of court fees claimants shall be entitled to get the enhanced amount.

Case relied upon by counsel for the appellant Kalabai (Supra), there was no issue before the Court whether miscellaneous appeal is maintainable without payment of court fees or not. The judgments relied upon by the counsel appearing for appellant in Sant Lal (Supra) and Rambihari (Supra) are in respect of binding precedent and said cases have not dealt with the issue of maintainability of miscellaneous appeal without payment of court fees.

Coordinate Bench of this Court in MA No.781/2015 and in MA No.1057/2021 has dealt with the issue extensively and has ordered appellant to pay deficit court fees and without payment of court fees it was held that miscellaneous appeal is not maintainable. I am in agreement with the orders passed by Coordinate Bench of this Court dated 06.09.2017, 07.06.2021 and 14.06.2021 passed in MA No.781/2015, MA No.1057/2021 and MA No.1058/2021, respectively.

In view of same, it is ordered that appellant will pay court fees within period of 30 days, failing which the appeal shall stand dismissed without further reference to this Court.”

(IV) In the case of **Maiku Singh and others vs. Anup Singh and others** reported in **2022 (4) MPLJ 285** has held that the appeal is not maintainable without payment of court fees on the claimed enhanced amount. Paras 5 to 12 are reproduced as below :-

“5. From the wordings of the provisions of Article 11 of Schedule II of Court fees Act” “2.5 percent of the enhanced amount claimed in appeal” it is clear that Court fees will be paid on that enhanced amount which is claimed by the appellant in his appeal memo and not on the amount which will be determined by the Court after adjudication of the claim of the appellant and the Court fees is payable at the time of presentation of the appeal not after judgment.

“6. Section 4 of the Court Fees Act, 1870 bars the Court from receiving a plaint/appeal if it does not bear the proper Court fees. Although section 149, Civil Procedure Code acts as an exception to the said bar and enables the Court to permit the plaintiff to pay the deficit Court fees at a subsequent stage. But this section also does not give unfettered power to the Court for giving time to appellant for paying Court fee.

7. Hon’ble Apex Court in the case of A.Nawab John and ors. Vs. V.N. Subramaniam, 2012 MPLJ Online (S.C.) 82= (2012) 7 SCC 738 in para 23 of its judgment observed as thus:-

“The section 149, Civil Procedure Code does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of Court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the Court 7 M.A. No.155/2019 fee within the period of limitation.”

8. Order VII, Rule 11 of Civil Procedure Code also provides that the plaint shall be rejected (c) “where the relief claimed is properly valued, but the plaint is written

upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so.”

9. Although, this Court in the case of M.A. No.851/2015, Arun Kumar Dubey vs. Vijay Kumar Gujrati and Others and M.A. No. 88/2018, Smt. Meera Sahu vs. Deepchand gave the permission to the appellants of these cases that they will be permitted to pay Court fees on the enhanced amount after judgment in the appeal. But in these cases coordinate bench of this Court did not lay down any principle that appellants are required to pay Court fee only on the amount enhanced by the Court in the appeal and that the Court fee will be paid after adjudication of the appeal by the Court. The orders are limited for these cases only.

10. On the other hand the Division Bench of this Court in the case of Dr. Hajarilal Agrawal vs. State of M.P. and ors., 2005 (2) M.P.L.J. 65 = 2006 (4) MPHT 237 turning down the prayer of appellant that appellant may be allowed to make payment of Court fee at the time of final decision of the appeal on compensation which may be determined by the Court and held - Court fees is payable on valuation of appeal. The amount for which adjudication is sought not on determined, on the initial stage where Court-fee is required to be paid.

11. Hon'ble Apex Court in the case of K.C. Skaria vs. Govt. of State of Kerala and anr., reported in 2006(2) M.P.L.J. (S.C.) 70 = AIR 2006 SC 811 held that non-payment of Court fees cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that person 8 M.A. No.155/2019 suing did not know the exact amount due to him as that will open the floodgates for converting several types of money claims into suits for accounts to avoid payment of Court fees at the time of institution.

12. From the above discussion, it is clear that the appeal is not maintainable without payment of Court fees on the claimed enhanced amount i.e. Rs.5,00,000/-, as also held by this Court in the case of Ramratan Singh vs. Janakchand Rana, 2017 MPLJ Online 135 = M.A.No. 781/2015 vide order dated 6-9-2017 and coordinate Bench of this Court in the case of Smt. Rashmi Mongare and others vs. Sunil Chaudhari and others, 2021 MPLJ Online 62 =M.A. No.

1058/2021 vide order dated 14.06.2021. If the claimants are unable to pay the Court fee on account of indigency, they can always seek the leave to file an appeal as an indigent person under Order 44 of the Code of Civil Procedure, 1908.”

(V) In the case of **Nitin Jain and another vs. State of M.P. and others WP No.2818/2015 (PIL) order passed on 08.12.2015. Division Bench** of this Court has held in para Nos.10 and 11 that court fees on the enhanced amount in appeal shall be 2.5% after the cutoff date, if appeal is presented after 09.01.2013. Para Nos.10 and 11 are reproduced as below:-

10. In this view of the matter we have no hesitation in holding that since the matter stands concluded by the Full Bench decision and the amending Act of 2012; therefore, the court fees on the enhanced amount in appeal shall be 2.5% after the cutoff date i.e. 02.04.2008 and not 10%, if appeal is presented after 09.01.2013.

11. In view of the above, Registry directed to appropriately calculate court fees on the appeal at the time of the presentation to the High Court in accordance with Schedule II, Article 11(a)(i) of the Court Fees Act (M.P. Amendment) Act, 2012 w.e.f. 9.1.2013.

7. Thus, some of the coordinate benches of this court have granted exemption from payment of court fee till final disposal of the case but has assigned no reasons to do so, whereas the Co-ordinate Benches of this Court in the case of **Maiku Singh and Others (supra)** and **Smt. Rashmi Mongare (supra)** have given a specific reasons and discussed the issue in length as to why the Court Fee is payable at the time of presentation of the appeal and not after the appeal is decided and just compensation is adjudicated.

8. Division Bench of this Court in the case of **Nitin Jain (supra)** in para No.11 directed that the Registry to calculate appropriate court fees

on the appeal at the time of presentation to the High Court in accordance with Schedule II, Article 11 (a)(i) of the “Court Fees Act (M.P. Amendment Act, 2012)”.

9. In the case of **Manoj Kumar and other Vs. HDFC Ergo General Insurance Co. Ltd. in MA.No.155/2019** vide order dated **17.04.2023** this Court has held that the court fee is payable at the time of the presentation of the appeal.

10. Above mentioned orders as mentioned in para-6 have been passed after due consideration of each case. Thus, by placing reliance on the above mentioned orders of this Court, in my considered opinion, arguments of learned counsel for the appellant that the court fees is not payable at the time of filing/presentation of the appeal is not acceptable.

11. Hence I.A. No.10710 of 2022 is rejected and appellants are directed to pay requisite court fee as pointed out by Registry within 30 days of this order, failing which, this appeal shall stand dismissed without further reference to the Court. After payment of the requisite court fee by the appellants, matter be listed for admission in due course.

(AMAR NATH (KESHARWANI))
JUDGE