

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.956 OF 2016

IN

FIRST APPEAL ST. NO.20543 OF 2015

(SMT. VIJAYA RAMRAO MOHOD...VS..MOHD. FAROOQUE GULAM SHABBIR & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.B. Raut, Advocate for Applicant/Appellant.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 28, 2016.

None appears for the non-applicants/
respondents, though served.

Accepting the reasons stated in the application,
which are not controverted, the delay of 196 days in filing the
appeal is condoned.

The civil application is allowed.

CIVIL APPLICATION NO. 3132/2015.

The appellant has challenged the award passed by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 to the extent the Tribunal has not granted interest on the amount of compensation determined by it for the period from the date of filing of the claim petition till the date of the award. The appellant contends that the claim made by the appellant in this appeal is not covered by the expression

“amount or value of the subject matter in dispute” in Article 1 of Schedule I of the Maharashtra Court Fees Act and therefore, the appellant is not required to pay the Court fees. The learned advocate for the appellant has relied on the judgment given in the case of *State of Maharashtra Vs. Mishrilal*, reported in **AIR 1964 SC 457** in support of the submission. In the said case the appeal was filed challenging the decree passed by the trial Court and in this background the Hon'ble Supreme Court held that the amount of *pendente lite* interest will not be covered by the expression “amount or value of the subject matter in dispute in appeal” for the purpose of Article I of Schedule I of the Maharashtra Court Fees Act, 1959.

In paragraph 16 of the judgment, the Hon'ble Supreme Court has observed that if the appellant disputes expressly the propriety or correctness of the decree with respect to the costs or *pendente lite* interest independently on the claim before the trial Court, he will have to pay court fees on the amounts challenged as in that case the appellant disputes those amounts in appeal and therefore, those amounts will be covered by the expression “amount or value of the subject matter in dispute in appeal”.

In the present case, the appellant has specifically claimed *pendente lite* interest in the appeal filed by her and she has not challenged the award on any other point. Therefore, considering the proposition laid down in the judgment given in the case of *Mishrilal Tarachand Lodha* (supra) in my view, the appellant has to pay the court fees.

The Taxing Officer shall assess the amount of court fees payable by the appellant on her claim.

The civil application is disposed in the above terms

JUDGE

RRaut..

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

Uploaded by : R.B. Raut, PS

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