

ALLAHABAD HIGH COURT

Parmeshar Kurmi

Vs

Bakhtawar Pande

(King, J.)

25.06.1932

JUDGMENT

King, J.

1. This reference raises the question of the proper interpretation of Schedule I, Article 5, Court-fees Act, 1870. The application for review of judgment was made on 13th May 1932. The judgment to be reviewed is dated 16th February 1932, and the memorandum of appeal, on which the judgment was passed was filed on 5th February 1932. The Court-fee leviable on the application for review is governed by Art 5 and is therefore, "one half of the fee leviable on the memorandum of appeal." If the words are construed in their plain and ordinary meaning we must hold that the proper fee is one half of the fee leviable on the memorandum of appeal which was filed on 5th February 1932, i.e., one half of 295. On this interpretation the proper court fee has been paid.

2. The Court-fees Act has been amended in its application to the United Provinces by an amending Act which came into force on 1st May 1932. Under this amending Act the scale of advalorem fees has been enhanced. In my opinion the amending Act does not affect the amount of fee leviable on the application for review. The memorandum of appeal, which determines the fee leviable on the application for review, was filed before the amending Act came into force. The question is what fee was leviable on the memorandum of appeal at the time when it was filed. This question is not affected by the subsequent commencement of the amending Act. Precisely the same question arose in *Nandi Ram v. Jogendra Chandra* AIR 1924 Cal 881. The question was fully discussed by the learned Judges who held that the fee on the application for review must be calculated on the basis of the fee leviable on the memorandum of appeal according to the law in force when the memorandum was filed. I agree to the reasoning and the conclusions of the learned Judges and hold that the proper court-fee has been paid.

