

# Privy Council upholds landmark case over litigants claim to VAT on legal costs

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The Privy Council has upheld a landmark case over the ability of litigants to claim Valued Added Tax (VAT) on their legal costs when they are successful in pursuing or defending a lawsuit.

Delivering a judgment Thursday, five Law Lords of the United Kingdom-based appellate court upheld an appeal over the technical legal issue, which arose in a case in which a woman successfully sued the South West Regional Health Authority (SWRHA) for medical negligence over her son's death.

The appeal was not over her success in the case inclusive of the over \$1,750,000 in compensation that was ordered for her, but the lack of application of the 12.5 per cent tax for goods and services to the legal costs she was also awarded.

In deciding the appeal, UK Supreme Court Deputy President Lord Patrick Hodge noted that he and his colleagues were only asked to consider the application of VAT to prescribed legal costs, which are calculated on a set scale based on the potential compensation sought in the lawsuit.

With prescribed costs, a successful litigant can potentially receive more or less than the actual legal fees they paid to their lawyers based on the value of the claim and the attorney they chose to retain to defend or pursue it.

However, legal sources said that the legal principles upheld by the Privy Council would also apply to budgeted legal costs, which are based on the budget set at the start of the case, and assessed costs, which are calculated based on a detailed examination by a judicial officer of what was reasonable in the circumstances.

Lord Hodge noted that the Appeal Court incorrectly interpreted the Civil Proceedings Rules when it ruled that VAT could not be applied to the judge's costs order after she pronounced it.

He also stated that the local judges wrongly refused to intervene because it (VAT) applied differently to attorneys based on whether they were VAT-registered or not.

He also pointed out that in circumstances where the prescribed VAT is set to exceed the VAT actually paid by the litigant for their legal representation, the indemnity principle would apply and only the value actually paid would be recoverable.

"The words of the rule, 'the appropriate amount of value added tax' direct the court to apply the indemnity principle and thereby make sure that the recipient party is not over-compensated for the VAT charge which he or she has incurred," Lord Hodge said.

As part of his judgment, Lord Hodge gave guidance to attorneys and judicial officers on how VAT payments on legal costs could be calculated and ordered.

He suggested that attorneys should directly raise their issues when supplying submissions on the quantum of compensation and legal costs.

He also advised the procedure to be followed when a litigant is represented by different lawyers, who are VAT registered and not.

On October 25, 2014, Bhawantee Singh-Weekes' 30-yearold son Navin Singh went to the Princes Town District Health Facility complaining of severe pain in his right leg.

Singh was diagnosed with sciatica—severe pain radiating from the back into the hip and outer side of the leg caused by compression of the sciatic nerve.

Despite receiving treatment at the facility, Singh was forced to return two days later as the pain he was experiencing worsened.

Although his lower limb was swollen and began to darken, Singh was diagnosed with the same condition and discharged.

Two days later, he was rushed to the San Fernando General Hospital as he had a high fever and was vomiting.

Doctors at the hospital eventually diagnosed him with necrotising fasciitis—a bacterial infection that results in the death of soft tissue.

Despite receiving treatment and undergoing emergency surgery, Singh died the following day.

In November 2020, the lawsuit brought by Singh-Weekes was upheld.

The judge ordered \$35,000 in damages for the pain and suffering Singh endured before he eventually died as well as \$25,000 for loss of expectancy of life.

The SWRHA was also ordered to pay almost \$55,000 in damages to cover Singh's funeral expenses.

The most significant compensation ordered by the judge was \$1,550,068.79 for Singh's loss of earnings as a welder.

She also ordered the SWRHA to pay Singh-Weekes \$142,216.73 in legal costs.

In August 2023, the Court of Appeal agreed to increase the compensation by a little over \$100,000.

However, the judges refused the aspect of the appeal over the SWRHA not being ordered to pay VAT on the legal costs it was ordered to pay.

The appeal was pursued by Singh-Weekes' lawyer Anand Ramlogan, SC, of Freedom Law Chambers as the legal precedent decided in the case was subsequently applied in other cases.

Singh-Weekes was also represented by Mohammud Hafeez-Baig, and Aasha Ramlal. The SWRHA was represented by Katherine Deal, KC, and Vijai Deonarine.