

**(2004) 07 AP CK 0007**

**In the Andhra Pradesh High Court**

**Case No :** CMA No's. 4701 of 2003 and 943, 949 and 1250 of 2004

Durgavathi Devi and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 23-07-2004

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 34

**Citation :** (2005) 1 ACC 536 : (2004) 6 ALD 672

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** S. Chandrasekhar, for the Appellant; B.H.R. Chowdary, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

L. Narasimha Reddy, J.—In these appeals, filed u/s 23 of the Railway Claims Tribunal Act, the only grievance of the appellants is that the Tribunal has not awarded any interest on the amount of compensation, in the respective claims.

2. In the claims presented before it, the Railway Claims Tribunal awarded different amounts, in favour of the respective appellants, in accordance with the provisions of the Railways Act and the Rules made thereunder. It did not grant any, interest pendente lite. However, it imposed the condition that, in case the amount awarded by it is not deposited within two months from the date of order, the compensation shall carry interest at 6% per annum, from the date of the order, till the date of realization. At the stage of admission itself, learned Counsel for the appellants had advanced extensive arguments.

3. Sri S. Chandrasekhar, learned Counsel for the appellants submits that though there is no specific provision in the Railways Act or Railway Claims Tribunals Act, it is always in the discretion of the Tribunal to grant interest. He submits that the claims were presented in the year 1999, and for variety of reasons they were not disposed of immediately. He contends that a writ petition had to be filed in this

Court, seeking directions to the Railway Board to constitute the Tribunal, and that the delay in disposal of the claims cannot be attributed to the appellants. Placing reliance upon various judgments rendered by this Court as well as other High Courts, learned Counsel submits that the appellants are entitled to be awarded interest pendente lite.

4. There is no specific provision in the Railways Act, providing for grant of interest, similar to Section 171 of the Motor Vehicles Act. Though the Tribunal is not equated to a Civil Court, the availability of power to grant interest on the principles of Section 34 C.P.C., cannot be seriously disputed. Even in cases to which Section 34 C.P.C., applies, award of interest, from the date of institution of the suit or proceedings, is discretionary; pendente lite interest cannot be claimed as of right. Award of interest is mostly governed by the terms of contract between the parties, the nature of denial of the claim of the plaintiff or petitioner and the probable loss or hardship to which the parties may have been subjected to.

5. Learned Counsel for the appellants relied upon several judgments, in support of his contention. A Division Bench of the Madhya Pradesh High Court in *Union of India (UOI) Vs. Smt. Laxmipati and Another*, took the view that it is competent for the Railway Claims Tribunal to award interest. In *Union of India v. Janardhanan*, AIR 1998 Mad. 272, the Madras High Court took the view that though Section 34 of the C.P.C., is not expressly made applicable to the proceedings before the Tribunal, it is competent for the Tribunal to award interest, in the absence of the specific bar. A Division Bench of the Kerala High Court in *Union of India (UOI) Vs. M. Thankaraj and etc. etc.*, held that it is competent for a Railway Claims Tribunal to award interest, since there is nothing in the Railways Act prohibiting the grant of interest. In *Godisela Rajamma and Others Vs. Union of India (UOI)*, a Division Bench of this Court was dealing with a case where the Tribunal rejected the claim, on the ground that there was no material placed before it, to show that the deceased died due to accidental fall. This Court reversed the finding and awarded a sum of Rs. 4 lakhs, as compensation, with interest at 9% per annum. Attention of this Court is invited to the various orders, where interest was granted on the amounts awarded as compensation.

6. In none of these judgments it was held that it is obligatory on the part of the Tribunal to award interest, on the amount of compensation adjudicated by it. The discussion proceeded on the lines, that though Section 34 of C.P.C., is not directly applicable, there is nothing in the Railways Act to disabling the Tribunal from awarding interest. Even assuming that Section 34 C.P.C., applies to the proceedings before the Tribunal, it is to be noticed that grant of interest is not a matter of course, nor a party before a Court can claim interest as of right. It is always in the discretion of the Court to award interest, depending on the facts and circumstances of the case. A reading of Section 34 C.P.C., discloses that grant of interest as such, as well as the rate at which it is to be granted, are in

the discretion of the Court, subject to the limits specified under Sub-sections (1) and (2).

7. When grant of interest u/s 34 C.P.C., itself is discretionary, the proceedings before it, Tribunal cannot be placed at a higher or a superior pedestal. Courts or Tribunals are guided by certain factors, while granting interest. Much would depend upon the nature of the claim. For example, if a definite sum of money, or amount representing liquidated damages, calculated on the parameters, contracted by the parties, became payable to the plaintiff, much before the suit was filed, and it was wrongfully withheld by the defendant, the plaintiff needs to be compensated for the period during which the proceedings have been pending. Where, however, the claim itself is to be adjudicated upon and the entitlement of different claimants is to be determined by the Court or Tribunal; the defendant or respondent liable to pay the amount, cannot be mulcted with the liability to pay interest. Even in such cases, the Tribunal may consider grant of interest, in case it is shown that the respondent before it had unduly protracted the proceedings and is responsible for the delayed disposal.

8. In *D.B. Avalakki and Another Vs. Union of India and Others*, , a Division Bench of the Karnataka High Court struck a balance between two extremities and held that, it is always open for the Tribunal to award interest and to decide the period in which the interest is to be awarded. It was further held that in determining the period, for which the interest is to be awarded, the Tribunal has to address itself, as to on whose default the disposal of proceedings were delayed. In that case, the O.P. was kept pending for ten years, and since there was nothing on record to disclose as to, on account of whose fault the disposal was delayed, the High Court awarded interest at 6% per annum, for a period of five years. In effect, it was indicated that the period for which the interest is to be awarded, would depend on the facts and circumstances of each case.

9. Reverting to the facts of the cases on hand, it is seen that the claims were made in the year 1999 and they were disposed of within three to four years. Having regard to the pace at which the proceedings of similar nature move in various Courts, it cannot be said that the Tribunal had unduly delayed the disposal of the matters, or that the respondent had hindered an otherwise faster disposal. The Tribunal has not only to decide as to whether an accident, as contemplated under the provisions of the Railways Act, has taken place, but also to identify the persons, who are entitled to receive the compensation. Till such questions are decided, the amount itself does not become payable. It was not as if the respondent could have paid the amount without such an adjudication; and had delayed the payment.

10. The Tribunal had adequately protected the interests of the appellants, by directing that, in case the amount awarded by it is not paid within two months from the date of the order, it shall carry interest from the date of filing of the O.P. The fact that the Tribunal itself was not constituted for a considerable time, cannot be a factor, by itself, to entitle the appellants to get the interest from the

date of filing of the O.P. Administrative delays cannot have their impact on individual claims. If the period, for which the Tribunal did not function, is excluded, the effective period of pendency, would in fact, becomes relatively shorter.

11. For the foregoing reasons, this Court is not inclined to interfere with the orders under appeals. The appeals are accordingly dismissed. No costs.