

(2008) 03 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A.T. No. 2846 of 2007

Kohinur Begum and Others	Vs	APPELLANT
New India Assurance Co. Ltd. and Another		RESPONDENT

Date of Decision : 06-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Motor Vehicles Act, 1988 — Section 166, 171, 173
Workmens Compensation Act, 1923 — Section 4A(3)

Citation : (2006) ACJ 2547 : AIR 2008 Cal 84 : (2008) 4 CHN 112 : 113 CWN 604

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Amit Ranjan Roy, for the Appellant; Saibalendu Bhowmik, for the Respondent

Judgement

Bhaskar Bhattacharya. J.

1. This appeal u/s 173 of the Motor Vehicles Act is at the instance of the claimants in the proceedings u/s 166 of the Motor Vehicles Act, 1988 and is directed against an award dated June 29, 2007 passed by the Motor Accident Claims Tribunal, 1st Court, Asansol in M.A.C. Case No. 53 of 2006/149 of 2006.

2. By the said award, the Tribunal below awarded a sum of Rs. 7,50,000/- in favour of the three claimants with a direction upon the New India Assurance Company Limited, the opposite party No. 2 therein, to make payment of the said sum within two months from the date of award failing which, it was ordered, the claimants would be entitled to get interest at the rate of 9 per cent per annum till realisation of the compensation in full.

3. Being dissatisfied, the claimants have come, up with the present appeal.

4. The only question that has arisen for consideration in this appeal is whether the Tribunal below was justified in not granting any amount of interest in favour

of the claimants/appellants by exercising discretion vested in it u/s 171 of the Act. We have already pointed out that the Tribunal granted interest at the rate of 9 per cent. per annum only in case of default in making payment of awarded sum of Rs. 7,50,000/- within two months from the date of award and not otherwise.

5. Mr. Roy, the learned advocate appearing on behalf of the appellants has strenuously contended before us that the Tribunal below failed to exercise jurisdiction vested in it by law by not considering the question of grant of interest on the awarded sum particularly when the claim-application had succeeded. Mr. Roy submits that a duty is cast upon the Tribunal to consider the question of grant of interest on the successful applicants but it does not appear from the award impugned that the Tribunal applied its mind to the aforesaid question. He, therefore, prays for passing a direction for payment of interest on the awarded sum from the date of filing of the claim-application before the Tribunal till the actual payment. In support of his contentions, Mr. Roy places reliance upon the following decisions:

1. Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, ;
2. National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, ;
3. State of Uttar Pradesh Vs. Jogendra Singh, .

6. Mr. Bhowmik, the learned advocate appearing on behalf of the Insurance Company, on the other hand, has vehemently opposed the aforesaid contentions advanced by Mr. Roy and has contended that in this case, the Tribunal has exercised its discretion by granting interest only in case of default of payment of the awarded sum within two months from the date of award and has decided not to grant any interest on the awarded amount in case no default is made by the Insurance Company. Mr. Bhowmik submits that in the matter of exercise of discretion by a Tribunal, an Appellate Court should not interfere.

7. In support of his contention, Mr. Bhowmik has relied upon the following decisions:

1. Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, ;
2. National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, ;
3. National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, ;
4. Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, ;
5. Sify Limited v. First Flight Couriers Ltd. reported in 2008 (1) S 167.

8. After hearing the learned Counsel for the parties and after going through the provisions contained in the Motor Vehicles Act, 1988 we find that in Chapter XI of the Act, there is a specific provision, viz., Section 171, which empowers the Tribunal to give interest in addition to the amount of compensation. The said

provision is quoted below:

171. Award of interest where any claim is allowed.--Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

9. A plain reading of the aforesaid Section 171 indicates that the Tribunal has been vested with the power to direct payment of simple interest at such rate and from such date as it may specify in this behalf with the restriction that the interest should not be payable from a date prior to the date of making of claim-application. The Statute has not fixed any rate of interest and the matter has been left with the discretion of the Tribunal.

10. In our view, ordinarily, if a claim-application succeeds and the Tribunal comes to the conclusion that any amount of compensation is payable, it should also grant interest on that amount from the date of making of claim-application before the Tribunal unless the Tribunal finds that for the delayed disposal of the claim-application, the claimant himself was responsible and that the grant of interest would be a hardship upon the owner or the Insurance Company who were not responsible for the grant of the delayed relief to the claimants. If knowing fully well that the car involved with the accident was really covered by the insurance and that there was no just reason for contesting the claim on the basis of materials on record, the Insurance Company unnecessarily contested the litigation and ultimately, becomes unsuccessful thereby causing delay in granting the just relief in favour of the claimant, there is no reason why interest should not be granted on the awarded sum. By the delayed disposal, it is the owner of the vehicle or the Insurance Company, the award-debtor, are really benefitted as they had been enjoying and utilising the money ultimately to be handed over to the claimant.

11. The next question is what should be the rate at which such interest should be payable. In our view, the same should be usually the existing rate of interest given by the nationalised Banks on a fixed deposit for a period of one year, if the claim-application is disposed of by the Tribunal beyond one year from the date of filing of the claim-application. If such application is disposed of before the period of one year, in such a situation, the interest should be payable at the then rate specified for the term-deposit for the period the application was pending before the Tribunal.

12. The Motor Vehicles Act is a beneficial piece of legislation and therefore, the adequate amount of interest should be paid to the claimants so that they do not suffer for the delay caused due to belated disposal of the application. If the rate of interest is fixed not above the rate of Bank interest for the period concerned, the Insurance Company or the owner of the vehicles would not be prejudiced in any way for grant of such rate of interest because of the fact that the amount

which was ultimately payable was retained by them and they utilised the money at least at the prevailing rate of Bank interest, if not more, by investing elsewhere, during the pendency of the proceedings.

13. Although, Mr. Bhowmik laboriously contended before us that in the matter of grant of discretion, an Appellate Court should not interfere, we are not at all impressed by such submission in the facts of the present case. It is a settled law that sound exercise of discretion by the Trial Court is not interfered with by the Appellate Court and only in the cases where the Trial Court or the Tribunal below is clearly wrong in the exercise of discretion that an Appellate Court interferes. In this connection, it will be appropriate to refer to the following observations of the Apex Court in the case of Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi, where the said Court laid down the duty of an Appellate Court while dealing with an appeal against discretionary order:

In dealing with the matter raised before it at the appellate stage the appellate Court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it, had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Courts exercise of discretion. As is often said, it is ordinarily not open to the appellate Court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate Court to interfere with the trial Court's exercise of discretion.

(Emphasis supplied)

14. In the award impugned, if there is no discussion as to why the claimant should be deprived of the amount of interest, it necessarily follows that the Tribunal was oblivious of its duty to consider the question of grant of interest. In the case before us, the Tribunal has not spent a single line by disclosing the reason for refusal of grant of interest; on the other hand, it has merely granted interest only in case of default of payment of the awarded amount which is rather an order of penal nature and according to the decision given by the Supreme Court, such penal interest is not permissible under the law relating to compensation under the motor vehicles law. We, therefore, find that it is a fit case of interference with the award for non-exercise of the discretion vested in the Tribunal.

15. We now propose to deal with the decision's cited by Mr. Bhowmik.

16. In the case of Abati Bezbaruah v. Deputy Director General, Geological Survey of India (supra), a Division Bench of the Apex Court held that award of interest would normally depend upon the Bank rate prevailing at the relevant time and in the said case by applying such principle, the Court directed payment of interest

at the rate of 9 per cent per annum. In the said decision, the Supreme Court held that no principle could be deduced nor could any rate of interest be fixed in Motor Accident Claim cases having regard to the nature of the provision u/s 171 giving discretion to the Tribunal in such matter unlike the provisions contained in Section 34 of the CPC or Section 4-A(3) of the Workmen's Compensation Act where rate of interest is fixed. We, therefore, find that our decision is in tune with the aforesaid decision given by the Supreme Court.

17. In the case of National Insurance Co. Ltd. v. Keshav Bahadur (supra), relied upon by both the parties, it was held that the penal interest in case of default of payment of compensation within specified period is not permissible within the scope of Section 171. In the case before us, the Tribunal has granted such penal interest without exercising its discretion in terms of Section 171. In the said case, it was further held that when a Statute gives a Judge discretion to do something, what is meant is a judicial discretion regulated according to the known rules of law and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet. We fully appreciate the aforesaid view taken by the Supreme Court and applying the same to the facts of the present case, we find that here is a case where the Tribunal totally forgot to exercise its discretion of grant of interest in terms of Section 171 of the Act by allowing the Insurance Company to get undue monetary advantage at the cost of the claimants.

18. In the case of National Insurance Co. Ltd. v. Mubasir Ahmed (supra), the Supreme Court was considering a case of compensation under Workmen's Compensation Act and in that context it held that interest was payable u/s 4-A(3), if there is a default in paying compensation due under the Act within one month from the date it had fallen due. It was further pointed out that the Section 4-A(3) of the Act was amended, inter alia, fixing the minimum rate of interest to the simple interest at the rate of 12 per cent per annum and the Supreme Court held that starting point should be on completion of one month from the date of which it fell due and obviously, it could not be the date of accident. According to the Supreme Court, since no indication was there when it became due, it had to be taken to be the date of adjudication of claim. In our view, the said principle cannot have any application to the case where Section 171 of the Act specifically declared that the Tribunal would be free to grant interest at least from the date of presentation of the claim application.

19. In the case of Kaushnuma Begum v. New India Assurance Co. Ltd. (supra), the Supreme Court found that 12 per cent simple interest was reasonable rate of interest in the earlier time, but in the change of economy and the policy of the Reserve Bank of India, the interest rate having been lowered and the fact that the Nationalized Banks had been granting interest at the rate of 9 per cent on fixed deposits for one year, the said rate should be applicable in the fact of that case. We, in this case, have applied the same principle and thus, are of the view that the said decision rather supports the claimants.

20. In the case of Sify Limited v. First Flight Couriers Ltd. (supra), the Supreme Court was considering a special leave application against an order passed by the Division bench by which the respondent was permitted to defend the suit under Order XXXVII of the CPC without any condition by reversing the decision of the learned single Judge by which such leave was granted on payment of Rs. 15,00,000/-. In such a case, the Supreme Court held that the order passed by the learned single Judge granting conditional leave to the respondent to defend the suit being discretionary and having already been complied with by the respondent, should not have been interfered with by the Division Bench.

21. We fail to appreciate how the said decision can have any application to the fact of the present case where the discretion has not at all been exercised and no reason has been assigned why the interest should not be paid to the claimants thereby permitting the Insurance Company to enjoy the fruit arising out of the delayed disposal of the proceedings.

22. On consideration of the entire materials on record, we, thus, are of the view that the award passed by the Tribunal should be modified by directing the payment of interest at the rate of 9 per cent per annum being the usual Bank rate at the relevant time on deposit for one year by a Nationalized Bank. We, thus, direct the Insurance Company to pay that amount from the date of filing of the claim application till the deposit of the awarded amount before the Tribunal; such interest be paid within one month from today in a manner the Tribunal directed payment of the principal amount.

23. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

24. I agree.