

(1999) 12 GUJ CK 0090

In the Gujarat High Court

Case No : First Appeal No"s. 2632 to 2637 of 1999

Manoj Rambhai Gadhvi

APPELLANT

Vs

Vaghasia Balubahi Khodabhai

RESPONDENT

Date of Decision : 02-12-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2001) ACJ 294 : (2000) 3 GLR 105

Hon'ble Judges : Y.B. Bhatt, J;Arunkumar Kantilal Trivedi, J

Bench : Division Bench

Advocate : Rajni H. Mehta, for the Appellant; Shakeel A. Qureshi and Lilu K. Bhaya, for the Respondent

Judgement

Y.B. Bhatt J.

1. These are appeals filed u/s 173 of the Motor Vehicles Act, 1988 by the Insurance Company together with owner and driver as appellants.

2. At the outset we may make it clear that the award so far as the quantum of compensation is concerned, is not in challenge. The only question raised in this group of appeals is as regards the rate of interest awarded by the Tribunal at the rate of 15% per annum from the date of the claim petition till payment. We may further clarify that the period during which the interest is to accrue viz. from the date of the claim petition till realisation is also not in dispute. In short, the only contention raised by the appellants is that the rate of 15% per annum is excessive and the same requires to be reduced.

3. Learned counsel for the appellant particularly contends that due to various factors affecting the economy of the country, the interest rates which were at their peak in or about the year 1994 had thereafter stabilised for some time, but had started to show a dropping trend in or about the year 1997. Accordingly he submits that the discretion vested in Tribunals and Courts to award interest must be exercised in the light of the current trend in the economy of the country, and

cannot be pegged at 15% as has been the practice so far. As against this, learned counsel for the respondents in these appeals seek to rely upon a number of decisions of this court where an interest rate at 15% has been approved or where the interest rate has been enhanced from a lower rate to 15%. The respondents, therefore, submit that the rate of 15% awarded by the Tribunal is perfectly justified and no reduction should be permitted. In this context respondents sought to rely upon a decision of a Division Bench of this court in *Mohanbhai Gemabhai Vs. Balubhai Savjibhai and Others*, . In this case the Division Bench of this Court increased the rate of interest on the award from 12% to 15%, "in view of the changed circumstances". In paragraph 24 of the said decision the Division Bench has considered the question of interest on the claim allowed in the light of section 171 of the Motor Vehicles Act, 1988. While observing that "this is a question within the discretion of the Tribunal, such discretion has to be exercised judicially". On the facts of that case the Division Bench was faced with an award which had granted interest only at the rate of 6%, and after noting the various decisions where such interest rate was gradually raised from 4% to 6% and from 6% to 12% periodically, this decision ultimately holds that the rate of 15% per annum would be just and reasonable "in view of the changed circumstances".

3.1 Learned counsel for the respondents further relied upon another decision of a Division Bench of this court in the case of *Oriental Fire and Genl. Ins. Co. Ltd. Vs. Amarsing Pratapsing Sikliker and Others*, . In this case as well, the High Court was considering the award of the Tribunal where interest was awarded only at the rate of 6% per annum and in the opinion of the Bench, required to be enhanced. In paragraph 25 of the said decision, note has been taken of an earlier decision of this court (referred to hereinabove) that the rate of interest at 15% would be more appropriate. For this reason the interest rate awarded by the Tribunal at 6% was raised to 15% per annum.

3.2 Learned counsel for the respondents have also sought to rely upon the decision of the Supreme Court in the case of *Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi*, . In paragraph 6 of the said decision the Supreme Court has specifically increased the rate of interest awarded from 12% to 15%, however, on the principle that the transaction in question was a commercial transaction, and that failure to deposit the amount in the account of the appellant who deposited the cheque, the bank has deprived the user of the sum of Rs.1 lac for over a period of seven years, and that during the said period the appellant had to suffer winding up proceedings under the Companies Act allegedly on the ground of financial crunch. Thus, the interest rate was raised not only because there was a commercial transaction between the parties, but also on account of the special facts of that case.

3.3 Learned counsel for the respondents have also sought to rely upon a Division Bench judgement of this court in the case of *United India Insurance Co. Ltd. Vs. Ramanbhai K. Raval and others*, reported at 1996(1) GLH 272. In this decision

the Tribunal had awarded an interest at the rate of 15% per annum which was challenged. This challenge was rejected and the rate of interest at 15% was upheld, with a simple observation that since there is no statutory provision for the rate of interest, it was within the discretion of the Tribunal to award interest at 15% per annum.

4. The aforesaid decisions, therefore, do not approach the question of the rate of interest awardable as a question of principle. These decisions do not lay down any guidelines as to what the rate of interest can be or ought to be, and do not lay down any guidelines as to how such discretion should be exercised by Tribunals and Courts.

5. However, an earlier Bench of this court (to which one of us was a party) has recently rendered a decision in the case of GSRTC Vs. Prabatsinh Rupsinh Parmar, in First Appeal No.98/99 on 23rd September 1999, dealing particularly with the principles on which such discretion should be exercised. In paragraphs 5 to 8 of the said decision the principles pertaining to the exercise of discretion by the Tribunals have been particularly discussed.

6. In para 8 of the said decision the Bench has observed as under:

"We may, however, observe that interest rates, speaking generally, have been dropping since approximately two years. It would, therefore, be appropriate that the interest awarded under discretionary powers of a tribunal or other fora in respect of claims preferred in the year 1997 and thereafter should be at a rate somewhat lower than 15%, and in this context, 12% would not be inappropriate."

7. To sum up the decisions on the subject, with particular reference to the last decision referred to hereinabove, we are of the opinion that the interest awardable by Tribunals and Courts, though discretionary, must have some relationship to the interest rate generally prevalent in the economy, in the interest of uniformity, consistency and stability, in the awards/ decrees on which interest is awarded. It is, therefore, necessary that the limits of discretion should also be laid down. It is for this reason that the earlier Bench was required to make the observations in paragraph 8 of the said decision (*supra*).

8. Following the said decision we are of the opinion that, looking to the facts of the present appeals, that the accident occurred in July 1994 and the claim petitions were filed in the same year, interest at 15% per annum on the amount of compensation awarded from the date of the claim upto 30th June 1997 would be reasonable, and interest at 12% per annum on the awarded amount for the subsequent period upto realisation would be applicable. It is so held and directed.

9. These appeals are partly allowed to the aforesaid extent with no order as to costs. Decree accordingly.

10. We may observe as a matter of prudence that circumstances within the economy of the country may be altered either way in future. This may require adjustment of interest rates awardable in future. However, this is a question of

principle, which in our opinion, different Tribunals and Courts ought not to undertake on their own since it would lead to different conclusions being drawn by different Tribunals and Courts and different rates being adopted. In our opinion, this is a question best left to the higher courts for consideration in future.