

**(2008) 08 JH CK 0161**  
**In the Jharkhand High Court**

Nand Kishore Prasad Sahu

APPELLANT

Vs

Jyoti Prasad Khatri and Another

RESPONDENT

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**Date of Decision :** 19-08-2008

**Acts Referred:**

**Citation :** (2009) 1 JCR 106

**Hon'ble Judges :** M.Y. Eqbal, J;Jaya Roy, J

**Bench :** Division Bench

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### Judgement

1. The claimant-appellant has challenged part of the judgment and award dated 15.2.2007 passed by the Motor Accident Claims Tribunal, Lohar-daga in Compensation Case No. 47 of 1994 whereby interest has been awarded from 3.1.2006.

2. Learned Counsel for the appellant submitted that the Tribunal has not mentioned the date when the claim case was dismissed for default but only mentioned the date i.e. 3.1.2006 when the claim case was restored and taking the date of restoration, the interest was awarded from that date. According to the learned Counsel the claim case was dismissed for default on 13.5.2005 and same was restored on 3.1.2006. It is contended that for the period i.e. from 13.5.2005 to 3.1.2006, the claimant-appellant may not be entitled for interest, but for the rest of the period i.e. from the date of filing of the claim application till the date of award, the claimant is entitled to interest at the rate awarded by the Tribunal.

3. The appeal was heard on 20.2.2008 and the appellant was directed to produce certified copies of the order-sheets of the claim case. Pursuant to that direction, certified copies of the order-sheets have been produced. The claim case was filed by the appellant and was registered on 6.5.1994. After institution of the claim case, several dates were fixed for admission of the claim case, for service of notice etc. Further, it appears that the case was adjourned on various dates either because the Presiding Officer was out of station or because of the fact that claim case transferred from one Court to another Court on several occasions.

Lastly, by order dated 24.2.2003, the claim case was fixed for hearing. The date of hearing was time to time adjourned because of the fact that the claimant did not produce witnesses. Ultimately on 13.5.2005, the case was dismissed for non-prosecution. The order dated 13.5.2005 is worth to be quoted herein below:

The claimant Nand Kishore Prasad Sahu filed Hazari through his learned lawyer Sri B.B.K. Prasad.

O.P. No. 1 Jyoti Prasad Khatri filed Hazari through his learned lawyer.

The claim case is called on for hearing. Despite repeated call, no one appears on behalf of the claimant.

Perused the case record, issues are framed on 26.8.2004. Thereafter, eighteen adjournments are allowed to bring witnesses, but today also, no witness is in attendance. No one appears, on call and accordingly, the claim case is dismissed for default. Deposit the record in the record room.

4. After the claim case was dismissed, appellant filed Miscellaneous Case by filing restoration on 9.6.2005 for restoration of the claim case which was ultimately restored on 3.1.2006.

5. From the aforesaid facts, it is clear that from the date of filing of claim case i.e. 6.5.1994 till 24.2.2003 there was no negligence from the side of the appellant in prosecuting the case. But when the claim case was posted for hearing it was only because of either non-appearance of the claimant or his failure in bringing the witnesses, the claim case lingered upto 13.5.2005, on which date, it was dismissed for default. The claim case was ultimately restored on 3.1.2006. In our view therefore, from 24.2.2003 to 3.1.2006, it was because of the negligence and fault of the claimant-appellant, the case remained pending and for this period/the appellant is not entitled to get interest.

6. Accordingly, the appellant shall be entitled to get interest @ 6% from the date of filing of the claim application till 24.2.2003 and thereafter from 3.1.2006 till the date of passing of the impugned judgment.

7. The appeal is therefore allowed in part with a direction that the appellant shall be entitled to get interest for the dates indicated herein above.