
(1982) 02 GAU CK 0013
In the Gauhati High Court
Case No : M.A. (F.) 18 of 1978

National Insurance Co. Ltd. APPELLANT
Vs
Sirdir Pyara Sing and Another RESPONDENT

Date of Decision : 05-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Motor Vehicles Act, 1939 — Section 110CC

Citation : (1987) 61 CompCas 807

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Advocate : B.S. Guha, for the Appellant; J. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Lahiri, J.—In this appeal, the sole point urged before us is that the Motor Accidents Claims Tribunal, " the Tribunal", for short, constituted under the Motor Vehicles Act, 1939, for short " the Act ", had no power to award "interest" on compensation in a proceeding u/s 110 of the Act. No other point has been urged.

2. The respondent lost his son aged about 23 years in a motor accident as far back as on May 16, 1965, and lodged his claim for compensation on May 23, 1965. The learned Tribunal awarded compensation of Rs. 20,000 with simple interest at 6% per annum from the date of filing of the claim petition till the realisation of the compensation. The insurer, a nationalised insurance company, a public institution, has waged a battle, and questioned the payment of a paltry amount. The battle is "uneven"--a public institution v. a private individual. Public bodies should resist the temptation of litigation like a cantankerous litigant for an insignificant amount raising technical pleas. In *The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another*, the Supreme Court observed that public institutions convict themselves of untrustworthiness out of their own mouth by resorting to such defence. In *State of Haryana Vs. Smt. Darshana Devi and Others*, when the Government raised the question whether court-fees are

payable by the claimants, the Supreme Court observed that the Government had committed a social wrong and injustice in not settling the claim forthwith but fighting like a cantankerous litigant. Their lordships pointed out the solemn duties of the State which undoubtedly include other authorities, under Articles 39(a) and 41 of the Constitution, namely, their duty to render public assistance without litigation in cases of disablement. It has been observed that insurance against third party risk is compulsory, motor insurance has been nationalised, the victims are mostly below the poverty line and litigation is nothing but compounded misery. Their Lordships recommended " on the spot payment of compensation " and critically observed that accident claims were pending before the Tribunal in heartless slowness. Their Lordships have pointed out the need to make pre-trial settlements to narrow down all technical controversies and to bear in mind that it is the prime duty of all " to wipe out every tear from every eye which has judicial relevance. For, law must keep its promise to justice."

3. There was no pre-trial settlement of the claim nor was there any attempt or endeavour to pay up even a reasonable amount at the trial stage. The liability of the appellant to pay compensation has been proved to the hilt, but to compound the misery of the claimant who had lost his son, he has been dragged to this court and it is pending for over five years in this court.

4. We have been called upon to decide a stale matter which is no longer important for the appellant company, as the right to get interest from the Tribunal is now a statutory right u/s 110CC of the Act which, of course, came into force from March 2, 1970.

5. The moot question is the jurisdiction of the Tribunal to award interest. The power to award interest is expressly provided in Section 34 of the Civil Procedure Code. Mr. B.S. Guha, learned counsel for the appellant, submits that the terms of Section 34 of the Code do not apply to proceedings under the Motor Vehicles Act. The learned counsel contends that the principles of natural justice cannot be invoked in granting relief when the authority is a Tribunal constituted by the Act. Its power and jurisdiction are circumscribed by the provisions of the Act.

6. At first blush, the contention of the learned counsel for the appellant appears to be sound as, admittedly, at all relevant times, there was no provision for " awarding interest " in claim proceedings under the Motor Vehicles Act, 1939. Section 110F bars the jurisdiction of civil courts to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal. Therefore, prior to the constitution of the Claims Tribunal, the civil courts had jurisdiction to try such actions for compensation. The civil courts had undoubted power to grant interest u/s 34 of the Civil Procedure Code. When the jurisdiction of the civil court was transferred to the Claims Tribunal, in the absence of any provisions to the contrary, it must be presumed that with the transfer of powers and jurisdiction to try such action, all the necessary powers the civil court had were also transferred to the Tribunal. The object and purpose of the transfer of jurisdiction is to secure speedy and expeditious disposal of

claim cases by the Tribunal. The provisions relating to compensation are social legislation. The transfer of jurisdiction from the civil court is never for the purpose of limiting the claims which the needy claimants could have obtained from the civil courts. When the civil courts trying the very same action could have awarded interest, it does not stand to reason why the Tribunal cannot make an award for interest on compensation. Further, the Tribunal may award interest on the amount of compensation if "the person liable" withholds the rightful claim of the claimant. There was no express provision for prohibiting the Tribunal to award interest nor was there any provision limiting the range or compass of the Tribunal to award interest which could be awarded by the civil court. We find sufficient confirmation of our view in *Bishan Devi v. Sirbaksh Singh*, where the Supreme Court ordered payment of interest at the rate of 6% per annum. In view of the order of the Hon'ble Supreme Court, we can firmly conclude that their Lordships would not have granted interest if it was impermissible under the law.

7. We are also of the view that the claimant is entitled in equity to claim interest for the delayed payment of compensation. On and from the date of lodgment of the claim, claimant becomes entitled to the rightful claim of compensation. The amount of compensation awarded by the Tribunal becomes his personal property and as the claimant is deprived of that property, he is entitled to interest on the amount. In equity, the interest is deemed to be payable by the person who becomes liable to the amount claimed. In *Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission* [1928] AC 492 : AIR 1928 PC 287, the question arose as to whether the owner of the acquired land was entitled to interest when the Act did not endow such power to the authority. The possession of the land had been taken and the owner was deprived of the use of the land. It was a case of expropriation. The Privy Council has held that the owner of the land is entitled to interest on the principal sum awarded from the date when possession of the land is taken by the authority, unless the statute clearly shows a contrary intention. We extract the relevant observations of the Judicial Committee ([1928] AC 498) :

"...but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The statute in the present case contains nothing which indicates such an intention. The right to receive interest takes the place of the right to retain possession and is within the rule."

8. It would thus be clear that the claim to interest proceeds on the assumption that when the owner of a property loses possession of it, he is entitled to claim interest in place of his right to retain possession, unless such a claim is excluded by the statute. It may be stated here that at no point of time, payment of interest was excluded under the Motor Vehicles Act, 1939. Therefore, on the

principles laid down in *Inglewood Pulp and Paper Co. Ltd.* [1928] AC 492 : AIR 1928 PC 287, the claimant is entitled to interest.

9. On simple commercial basis, if the compensation had been paid at the appropriate time, the other side would have had the use of it. In *Harbutt's "Plasticine" Ltd. v. Wayne Tank and Pump Co. Ltd.* [1970] 2 WLR 198 : [1970] 1 All ER 225 CA, the court ruled that in respect not only of the non-pecuniary loss of a plaintiff in a personal injury claim but also in respect of the pecuniary loss of a deceased's dependants in a Fatal Accidents Act claim, as a general rule, interest should be given on the total award only from the date of service of the writ. In *Jefford v. Gee* [1970] 2 QB 130 : [1970] 2 WLR 702 : [1970] 1 All ER 1202 (CA), Lord Denning M.R., on a survey of the various strands of authority, ruled that interest should be awarded to a plaintiff "for being kept out of money " which ought to have been paid to him, which the defendant ought to have paid at the appropriate time, at the first possible opportunity.

10. In the instant case, the appellant did not pay the amount of compensation on receipt of the lodgment of the claim, kept the amount of compensation with it and must have utilised the same. Admittedly, the principal amount was that of the claimant and the appellant deprived the claimant of the principal and utilised it. Accordingly, the appellant is liable to pay the interest as the claimant was " kept out of the money " which ought to have been paid by the appellant to the claimant. It was purely a case of appropriation and as such the appellant is liable to pay the interest.

11. If we look at the scheme of " the Act", we discern that apart from the fact that the actions for such compensation were tried by the civil court, there is no provision in " the Act" which enjoined on the Tribunal to take into consideration some factors and to peremptorily ignore certain other specified factors in determining compensation, it has no power to grant solatium as provided for under the Land Acquisition Act. In the scheme of the self-contained Act, there is no provision prohibiting the Tribunal from awarding such interest. Under these circumstances, proviso (2) to Section 1 of the Interest Act, 1839, comes into play and the claimant is entitled to interest.

12. In *National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India*, the question of entitlement of interest came up for consideration. The Life Insurance Corporation Act and the Rules did not provide any express provision for granting interest on the delayed payment of compensation. Notwithstanding the absence of any provision, their Lordships awarded interest relying on the general rule of equity.

13. Under these circumstances, we are constrained to observe that the respondent-claimant is entitled to interest on equitable grounds. The weight of authorities is in favour of the conclusion that we have reached.

14. We are fortified by some well considered decisions of different High Courts where their Lordships have held that the claimant is entitled to interest.

15. Swarnalata Dutta Barua and Another Vs. National Transport India Pvt. Ltd. and Another, Union of India v. P.S. Mehal [1976] ACJ 146 : AIR 1976 J&K 80 , Oriental Fire and General Insurance Co. Ltd. Vs. Mrs. Kamal Kamini Das and Others, Life Insurance Corporation of India Vs. Karthyani and Others, Ramesh Chandra Vs. Randhir Singh and Others, and Hira Devi v. Bhdha Kanti Das [1977] ACJ 293 : AIR 1977 Gau 31 .

16. We are bound by the decisions of our court in Swarnalata Dutta Barua and Another Vs. National Transport India Pvt. Ltd. and Another, and Hira Devi v. Bhaba Kanti Das [1977] ACJ 293 ; AIR 1977 Gau 31.

17. Learned counsel for the appellant has placed before us Prafulla Kumar Bose Vs. Suresh Kumar Vinod Kumar Lal Poddar and Others, where a contrary view has been taken. Their Lordships laid emphasis on the effect of the introduction of Section 110CC of the Act and therefrom drew the conclusion that the right to award interest was conferred only on and from the date of coming into force of the said section and the Tribunal had no jurisdiction to award compensation prior to the introduction of the said section. This apart, no reason has been given. We find that Section 110CC of the Act limits the power of the Tribunal to grant interest as awardable u/s 34 of the Code of Civil Procedure. Section 110CC limits the power of the Tribunal to award interest. After the introduction of the said section, the Tribunal can award only simple interest and that too from the date of filing of the claim. The first restriction is as to the nature and character of the interest and the second restriction is regarding the time from which interest shall be awarded. At present, the Tribunal can award only simple interest. The Tribunal also cannot award interest from the date of the cause of action, namely, the accident. In our opinion, this is a restrictive provision brought in to limit the power and jurisdiction of the Tribunal to award interest. Section 110CC has been brought by way of abundant caution to settle the controversy as to the power of the Tribunal to award interest and brought in the statute book to regulate the power as to the date from which interest is awardable as well as the nature of the interest. We respectfully differ from the view expressed in Prafulla Kumar Bose Vs. Suresh Kumar Vinod Kumar Lal Poddar and Others, The decision of the Supreme Court in Bishan Devi , is binding and we are also bound by the decisions of this court in Swarnalata Dutta Barua and Another Vs. National Transport India Pvt. Ltd. and Another, and Hira Devi Bhaba Kanti Das [1977]ACJ 293 : AIR 1977 Gau 31.

18. For the foregoing reasons, we hold that the Tribunal was justified in awarding interest at 6% per annum from the date of institution of the claim proceeding till the money is deposited by the appellant into the Tribunal. Therefore, the claimant shall be entitled to get interest awarded by the Tribunal from the date of institution of the claim till the deposit of the amount into the Tribunal and no more. In the result, the appeal stands dismissed. However, on the facts and circumstances of the case, there will be no order as to costs.