

(1998) 03 MAD CK 0014

In the Madras High Court

Case No : Civil Revision Petition No's. 1030 and 1031 of 1997 and C.M.A. No. 544 of 1997 and C.M.P. No's. 5340 to 5342 of 1997 and 1783, 1922 and 1266 of 1998

National Insurance Co. Ltd., Madras-2

APPELLANT

Vs

Karpagam and 8 others

RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (1998) 03 MAD CK 0014

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; P. Natarajan for 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—The National Insurance Company has come to this Court against the awards passed by the Motor Accident Claims

Tribunal. I do not want to go into the facts of the case, as the only point that has been urged by the counsel for the revision petitioners/appellant in

C.M.A., is regarding the quantum of interest awarded by the Tribunal. In all these awards, the Tribunal had granted 18% interest from the date of

petition till date of realisation. The question is whether such rate of interest could be allowed in an award passed by the Tribunal, under the Motor

Vehicles Act. Section 171 of the Motor Vehicles Act, 1988, deals with the award of interest where any claim is allowed. It runs as follows:-

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.

2. Learned counsel for the petitioner submitted that the award of interest at 18% p.a., is excessive. The award of compensation does not create a debtor and creditor relationship for the purpose of awarding interest, in which case the Court can take into consideration what is the bank rate etc.

It is also contended that it cannot award interest to compensate the loss or erosion of money value due to inflation. The interest is awarded only because there is delay in payment. Therefore, either provisions of the Interest Act or interest awarded in Land Acquisition cases cannot be taken into consideration in such cases.

3. As against the said contention, learned counsel for the claimants submitted that taking into consideration the present money value, the award of interest at 18% is correct. Apart from the same it is also contended that u/s 171 of the Motor Vehicles Act, there is a discretion to the Tribunal to award interest. If the discretion is properly exercised, this Court should not interfere in such cases. It is submitted that in this case, a proper discretion has been exercised in awarding interest at 18% per annum.

4. I heard the counsel on both sides. Learned counsel for the petitioner brought to my notice certain decisions of this Court as well as other High Courts and also of the Hon"ble Supreme Court. In the decision of the Karnataka High Court reported Smt. P. Ramadevi Vs. Sri C.B. Saikrishna and others, , a Division Bench of Karnataka High Court held that interest awarded at 6% p.a., do not require interference. In paragraph 10 of the Judgment, it has been held thus:-

10. The Motor Vehicles Act is a self-contained Act. The awarding of interest under the said Act depends not on compassion but on judicial discretion. It cannot also be a ground to compensate for the loss or erosion of the value of the money due to inflation. The provisions of the Interest Act or providing of interest on compensation under the land acquisition cases are not relevant. The compensation paid is on account of pecuniary loss or non-pecuniary loss. The interest is paid on such amounts to compensate the person to whom the compensation is awarded for delayed payments. Compensation is an amount paid in advance for any loss of life or loss of dependency or loss of earnings. It is not a debt. Therefore, the

interest to be awarded as prescribed u/s 110CC of the Motor Vehicles Act could only be at 6 per cent per annum. Therefore, the interest

awarded by the Claims Tribunal at 6 per cent per annum is legal and proper. Therefore, there are no grounds to interfere with the said order.

5. In AIR 1994 NOC 259 (Minor Bashida Mohamed Ali Isap v. Rasiklal Manilal Baval and others), a Division Bench of Gujarat High Court has

held that "wide discretion is given to the Tribunal or Court concerned for awarding interest u/s 171 of the Motor Vehicles Act, 1988 (Section 110-

CC of the old Act, and there is no fetter on the discretion of the Tribunal except that the interest shall not be awarded before the date of making

the application for compensation.

6. Learned counsel for the petitioner also brought to my notice a decision of our High Court reported in 1997-2-L.W.575 (P. Madheswaran and

another v. Rani and three others), wherein Section 171 of the Motor Vehicles Act came up for consideration. In para 6 of the Judgment, after

extracting the provisions of Section 171 of the Act, the Division Bench has upheld the award of the Tribunal, wherein interest at 15% per annum

has been granted. The Bench has held thus:-

The term "simple interest" is not defined in the Motor Vehicles Act, 1988. In "Dr. A.P. Biswas Law Dictionary", under the caption "interest", it is

stated as follows:-

"Interest" means rate of interest and includes the return to the made over and above what was actually lent, whether the same is charged or sought

to be recovered specifically by way of interest or otherwise. "Interest is of two kinds, simple and compound. A simple interest is that which is

payable at a certain rate. When interest for a certain period is added to the principal the interest on the total amount of principal and interest is

called compound interest. Interest in a wide sense is the return or compensation for the use or retention of another's money. In its narrow sense,

the word means the amount which one has contracted to pay for the use of borrowed money. Interest in this sense, may be of three categories.

The first category is interest fixed by the parties to the bargain or contract, that is interest ex contract. The second category is conventional interest

determined by the accepted usage, prevalent in a trade or mercantile community, called ex more. The third category consists of legal interest

allowed by law or by Court empowered to grant interest, called ex lege.

The simple interest mentioned in Sec. 171 of the Motor Vehicles Act will come under the third category consisting of legal interest allowed by law

or by Court empowered to grant interest, called ex lege. It is clear from a reading of the Sec. 171 that the term used in the said section is simple

interest as opposed to compound interest and the rate of simple interest is left to the discretion of the Claims Tribunal. Upon the facts and

circumstances of the case, the grant of 15% interest is not excessive. The ruling of the Supreme Court cited by the counsel for the appellant with

regard to interest as 12% per annum was based upon the peculiar facts of the case before the Supreme Court. The Claims Tribunal has exercised

its discretion under Sec. 171 of the Motor Vehicles Act by granting simple interest at a rate of 15% per annum which is reasonable and it is in

accordance with law. Accordingly, we partly allow the appeal by reducing the amount of compensation awarded under the head "Loss of earning

to the family" from Rs. 6,30,000/- to a sum of Rs. 5,04,144/- and confirm the compensation on other heads and also rate of interest at 15% p.a.,

from the date of filing of the application before the Claims Tribunal till the date of realisation. No costs.

7. Learned counsel has also brought to my notice the decision of the Supreme Court reported in Smt. Chameli Wati and Another Vs. Municipal

Corporation of Delhi and Others, wherein their Lordships held thus:-

It is well settled that every discretion conferred by statute must be exercised judicially on the basis of the facts and circumstances of a particular

case. Here when the learned single Judge enhanced the amount of compensation, he awarded interest on the enhanced amount @ 6% per annum

from the date of his judgment and the Division Bench also when it further enhanced the amount of compensation, directed that interest at the rate of

6% per annum be paid on the enhanced amount from the date of its Judgment and not from the date of the application. The learned single Judge as

well as the Division Bench totally ignored the fact that the enhanced amount of compensation awarded by them was in their judgment the correct

amount of compensation payable to the appellants on account of the death of the deceased resulting from the accident.

Their Lordships further went on and said thus:-

We direct that interest shall be payable on the enhanced amount of compensation as finally determined by the Division Bench at the rate of 12%

per annum from the date of the application for compensation.

8. In a subsequent decision reported in JT 1996 (7) S.C. 503 (The United India Insurance Co. Ltd. v. M/s. M.K.J. Corporation), in paragraph 10

of the Judgment, it was held thus:-

10. The next question is: what rate of interest the insured-respondent is entitled to get? In common parlance, when the insured-respondent is

deprived of right to enjoy his money or invest the money in business, necessarily the loss has to be compensated by way of payment of interest by

the insurance company. We are informed that as per the directions of the Government of India the appellant-insurance company has no option but

to invest the money in the securities specified by the Government of India under which the insurance company is securing interest on investment at

the rate of 11.3% per annum. Under these circumstances, the appellant-insurance company is liable to pay interest at 12% per annum from

January 1, 1991 till date of payment. It is then contended that as per the policy, the respondent is entitled to consequential loss as per the

independent policy. The Commission no doubt did not give any independent reason for the same but all the claims were heard and disposed of

together. Under these circumstances, we are of the view that the claims must be deemed to have been rejected.

9. In a still later decision of the Supreme Court reported in Nagesha Vs. M.S. Krishna and Another, , their Lordships directed that the

compensation amount will carry interest at 12% p.a. 12% interest alone was awarded again in the decision reported in Shashendra Lahri Vs.

UNICEF and Others, . On considering all these decisions, I feel that the award of interest at 18% p.a., is not correct. I also do not find any

reasoning by the Tribunal why it has awarded interest at 18% per annum. The question whether the discretion has been properly exercised or not

can be considered only when a finding is entered into as to why it is awarding a particular rate of interest. It is true that it can award interest and the

power to award interest is not disputed, but regarding the rate, certain judicial principles have to follow.

10. Here the decision reported in 1996 (7) SCC 503 (supra) gains importance. In

that case, their Lordships said that the interest is awarded to the claimant, because he is deprived of enjoying the money or to invest the money. It should not be treated as debt and for the said purpose, their Lordships took into consideration the fact that as per the direction of the Government of India, the Insurance Company has no option but to invest the money in the securities specified by the Government, under which Insurance company is securing interest on investment at the rate of 11.3%. On that basis their Lordships said that interest at 12% p.a., will be a reasonable one.

11. In the decision reported in Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, their Lordship even though specified certain guidelines for exercising the discretion, 12% interest was the rate awarded. In Nagesha Vs. M.S. Krishna and Another, also, interest at 12% p.a., was awarded. In this connection it may be noted that in the decision by the Division Bench of Karnataka High Court also the principle under which the judicial discretion has to be exercised is stated. The principle enunciated by the High Court of Karnataka is correct and a compensation claim cannot be treated as a debt, and therefore, interest cannot be awarded on the principle of Interest Act or at the rate of interest awarded under the Land Acquisition cases. As rightly held by the Karnataka High Court, the interest is paid on the amount to compensate the person to whom the compensation is awarded for delayed payment, and it is an amount paid in advance for the loss of life or loss of dependency or loss of earnings. It is the same principle the Hon'ble Supreme Court has also held in the decision reported in JT 1996 (7) S.C. 503 (United India Insurance Company's case), where also the interest was awarded for delayed payment. In the decision of our High Court reported in 1997-2-L.W. 579 (supra), even though the Division Bench upheld the claim of interest at 15% p.a., the decision of the Supreme Court has not been cited and how the discretion is to be exercised has not been considered. The Division Bench have held that the Tribunal has got jurisdiction to award interest, which fact is not disputed. Regarding the question how the discretion is to be exercised in awarding the rate of interest, in fact the decision is silent. Under the above circumstances, I feel that the award of interest at 18% p.a., is not proper and to that extent the awards of the

Tribunal require modification. The award of interest at 18% p.a., is set aside and the rate of interest will be 12% p.a., from the date of application

till date of payment. Both the C.R.Ps. and C.M.A. are allowed to the extent indicated above. However, there will be no order as to costs.

C.M.Ps. are closed.