
(1986) 04 GUJ CK 0001
In the Gujarat High Court
Case No : F.A. No's. 209 to 215 of 1986

New India Assurance Co. Ltd.

APPELLANT

Vs

Shanabhai Arjanbhai and another

RESPONDENT

Date of Decision : 03-04-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1987) ACJ 688 : AIR 1987 Guj 185 : (1987) 62 CompCas 665 : (1987) 1 GLR 247

Hon'ble Judges : R.A. Mehta, J; M.B. Shah, J

Bench : Division Bench

Advocate : M.J. Thakore for S.B. Vakil, for the Appellant; Mohit S. Shah for No. 1 and G.N. Desai for No. 2, for the Respondent

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the award in M.A.C. Petitions Nos. 473. 494, 523. 503. 495, 496 and 497 of 1983 the Insurance Company has filed the aforesaid First Appeals.

2. It is the contention of the Insurance Company that the claimants were sitting in the truck as passengers and they were not standing on the road as contended by them when the truck turned turtle. For this there is no evidence on record. On the contrary the injured claimants have in terms stated that they were standing on the road and because of the truck turning turtle they were injured. This evidence was appreciated by the Tribunal in Paras 59. 60 and 61. There is no other contrary evidence. In our view, therefore, it cannot be said that the finding of the Tribunal is in any way erroneous which calls for interference in appeal. The learned advocate for the appellant further contended that the Tribunal ought not to have awarded penal interest of 12%. As against this, the learned advocate for the claimants has relied upon the judgment of the Supreme Court in the case of Sukhbinder Kaur and Others Vs. Nirmolak Singh and Others, , where also the Court has awarded 12% interest. In our opinion, in this case there is no question of awarding any penal interest by the Tribunal. The Tribunal has only given

direction that if the amount is deposited within the specified time, then the interest would be 6%. But if the amount of the award is not paid within the period of three months, then after that date the rate of interest shall be 12% from the date of the award. In our view, taking into consideration the prevalent rate of interest, it cannot be said that the interest awarded by the Tribunal is in any way excessive which calls for interference in appeal by the Insurance Company. Hence the appeals are dismissed.

3. After the aforesaid order was passed by us yesterday, Mr. Thakore appearing on behalf of the appellant submitted that the Division Bench of this Court in First Appeal No. 1592/85 decided on 26-12-85 has held that the Court has no jurisdiction to award penal interest. In our view, in the present case there is no question of awarding any penal interest. The Tribunal has directed by its order that from the date of the application the claimants will be entitled to have compensation with interest at 6% till realisation with proportionate costs thereon. If the amount of award is paid within the period of three months after the date of the award, then the rate of interest would be at 6% from the date of the award. But if the said amount is not deposited within the stipulated time, then the interest rate would be 12% from the date of the award. In the aforesaid First Appeal decided by the Division Bench the Court has passed an order that if the amount is not deposited within the stipulated time, then from the date of the application the claimants would be entitled to recover 12% interest. In that set of circumstances the Court held that it amounts to penal interest. It should be noted that before the Division Bench S. 110-CC and the decision of the Supreme Court in the case of Sukhbinder Kaur and Others Vs. Nirmolak Singh and Others, , were not cited. In the case before the Division Bench the Court has not laid down the law that the Motor Accidents Claims Tribunal cannot pass an order for rate of interest at 12% on the amount awarded by it.

4. Further, S. 110-CC of the Motor Vehicles Act empowers the Court or the Claims Tribunal to award simple interest at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf at the time of passing the award in addition to the amount of compensation. There is no prohibition under this section that the Tribunal shall not award interest at the rate more than 6%. This section gives discretion to the Tribunal to award interest at reasonable rate on the amount awarded after taking into consideration the facts and circumstances of each case. Therefore, if the Tribunal after taking into consideration the fact that the judgment-debtor is prolonging the payment of amount awarded by it or that the judgment-debtor may not delay the payment of the amount of the award to the victim or to the heirs of the victim, if it passes an award that if the awarded amount is deposited within the stipulated time, then the interest would be at a particular rate and if the judgment-debtor/debtors fail to deposit within that time, then interest would be at a particular rate from the date of award, it cannot be said that the said order is a penal order.

5- The learned advocate for the Insurance Company vehemently relied upon S.

which provides that if after a certificate of insurance has been issued under sub-sec. (4) of S. 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Cl. (b) of sub-sec. (1) of S. 95 is obtained against any person insured by the policy, then, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. It is his submission that in view of S. 96 (1) the Court is required to refer to the provisions of S. 34 of the Civil P.C. which prohibits the Court from awarding interest at the rate of more than 6% per annum. In our view, when the Motor Vehicles Act specifically empowers the Tribunal or the Court to award such interest at such rate as it may specify in that behalf in the award, it cannot be said that S. 34 of the Civil P.C. would govern the award. Section 110-CC gives discretion to the Tribunal to award reasonable amount of interest after taking into consideration the facts and circumstances of the case. There is no prohibition that it shall not award interest at a particular rate. In this view of the matter, it cannot be said that the order passed by the Tribunal awarding interest at the rate of 12% from the date of the award is in any way illegal or erroneous. Further, in *Sukhbinder Kaur and Others Vs. Nirmolak Singh and Others*, the Supreme Court has also passed the decree wherein interest at the rate of 12% was awarded if the awarded amount is not paid within two months from the date of the order. In this view of the matter, it cannot be said that the order passed by us requires to be reviewed in any manner.