(1996) 10 MP CK 0047

In the Madhya Pradesh High Court

New India Assurance Co. Ltd. APPELLANT

Vs

Vishnu and Others RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 144

Citation : (1997) 2 ACC 654

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Judgement

R.D. Shukla, J.—This revision application is directed against order dated 26.2.1994 of the Member, Motor Accident Claims Tribunal Indore in Claim Execution Case No. 47/80/93 whereby the claimant who sustained injuries in a motor accident has been directed to return excess amount to the Insurance Co. alongwith interest @ Rs. 12% p.a. from the date the amount was actually received by him.

2. Brief facts of the case are that the claimant filed a claim petition before the Claims Tribunal Indore. The Tribunal awarded Rs. 40,000/- with interest @ 10% p.a. from the date of application till realisation of the same. Aggrieved by this order, the Insurance Company filed M.A. 134/86 in this Court. this Court was pleased to reduce the amount awarded by the Tribunal to Rs. 20,000/- along with interest @ 10% p.a. and the claimant was directed to return rest of the amount of Rs. 20,000/- with interest @ 12% p.a. The Insurance Company filed an application u/s 144 Civil Procedure Code. The learned Claims Tribunal the reafter passed the impugned order directing that the claimant is liable to return Rs. 20,000/- with interest @ Rs. 12% p.a. from the date of receipt of money by him. It appears that the claimant went up in SLP before the Supreme Court and the Supreme Court enhanced the amount to Rs. 30,000/- and the applicant was directed to deposit Rs. 10,000/-. This amount was deposited by the claimant in the Supreme Court itself. After decision of the High Court, the Insurance Company filed an application for return of the excess amount paid to the

claimant with interest @ 10% p.a. from the date of receipt of money by him, @ 12% p.a. from the date of receipt of money till deposit of excess amount.

3. Learned Claims Tribunal directed that as the amount was received by the claimant on or about 14.7.1986 and, therefore, the claimant is liable to pay interest from that date till deposit of excess money, hence this application by the Insurance Co.

4. Contention of the learned Counsel for the Insurance Co. is that the Company has deposited the money along with interest @ 10% p.a. from the date of application till deposit of money i.e. on or about 14.7.1986 and as per direction of the Supreme Court, the Company is entitled to return of the excess amount with interest @ 12% p.a. from the date of receipt of the amount by the claimant till deposit of excess money by the claimant.

5. As against it, learned Counsel for the claimant submitted that SLP was filed by the claimant and the amount awarded by the High Court was enhanced to Rs. 30,000/- and rest Rs. 10,000/- have been deposited by the claimant in the Supreme Court itself, and, therefore, no further amount is required to be deposited by him. Copy of the order passed by the Supreme Court in the SLP has been placed on record which reads as follows:

Delay condoned.

The delay in making the deposit is condoned. The respondents have been served. We are of the view that ends of justice would be met by modifying the order under appeal to the extent that the petitioner would be entitled to Rs. 30,000/- as compensation instead of Rs. 20,000/-as fixed by the High Court. The sum of Rs. 10,000/- deposited shall be refunded to the Insurance Company Notice may be issued to the Insurance Company to claim the refund.

Thus, the modification is only with respect to the amount of compensation. No modification has been made as to the rate of interest or the period of calculation of interest.

6. Section 144 C.P.C. provides that the Court which passed the decree or order shall on an application by any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position which they would have occupied but for such decree or order. It is thus evident that the Insurance Co. is required to be placed in the same position. In these circumstances, the claimant shall be liable to return the amount of Rs. 10,000/-with interest at the rate of 10% p.a. from the date of application i.e. 4.3.1980, till deposit of money by the Insurance Co. and he will further pay interest at the rate of 12% p.a. on the principal amount Of Rs. 10,000/ - from the date of receipt of money by the claimant, till deposit of the amount in the Supreme Court.

7. This revision application stands disposed of with direction as aforesaid.-In the facts and circumstances of the case, there shall be no order as to cost.