

(1992) 03 OHC CK 0033
In the Orissa High Court
Case No : M.A. No. 113 of 1986

Oriental Fire and General Ins. Co. Ltd.	APPELLANT
Vs	
Buli Dei and Others	RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Motor Vehicles Act, 1988 — Section 110D

Citation : (1993) ACJ 1119 : (1992) 74 CLT 141

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : Ajay Kumar Mohanti, for the Appellant; D.P. Parija, S.C. Panda, B.K. Mall and D. Nayak, for the Respondent

Judgement

A. Pasayat, J.—In this appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as the "old Act") the Oriental Fire and General Insurance Co. Ltd. (hereinafter referred to as "the insurer") calls in question the legality of the award passed by the Second Motor Accidents Claims Tribunal, Cuttack (hereinafter referred to as "the Tribunal").

2. The dependants of one Shyam Sundar Das, who lost his life in an accident caused by a truck bearing registration No. OSC 2991, belonging to Anjana Pradhan (hereinafter referred to as "the insured") lodged a claim for Rs. 95,000/-. The deceased was a grocer and, according to the Tribunal, was about 37 years old at the time of death. The Tribunal on assessment of evidence came to hold that the monthly loss of dependency was Rs. 400/- and applying a sixteen times" multiplier to the annual loss of dependency, calculated the compensation at Rs. 76,000/-. Costs of Rs. 1,000/- were awarded. It was stipulated that the compensation, costs and interest at the rate of 6 per cent from the date of claim, i.e., 9.7.1984 on the compensation was to be paid within three months excluding the period required for securing the copy of the award. It was directed that in the event of failure to pay the awarded amount within the

stipulated period, the interest at the rate of 12 per cent per annum was payable from the date of claim till realisation.

3. The twofold grounds on which the award has been characterised as unsustainable by the learned counsel for the insurer are as follows:

(i) The loss of dependency and multiplier as adopted are high; and

(ii) grant of interest being discretionary the stipulation for higher rate of interest imposed by the Tribunal did not have the sanction of law.

The learned counsel for the claimants, however, supports the order of the Tribunal. According to him, the award is reasonable, and in any event the Tribunal having adopted a multiplier of sixteen times there is no scope for any interference." It has been strenuously urged that though earlier 65 years was fixed to be expected life-span of an Indian, presently 70 years is adopted. Secondly, it is urged that the grant of interest being discretionary, it was open to the Tribunal to stipulate higher rate of interest in case the awarded amount is not paid within the time limit fixed by the Tribunal.

4. The term "compensation" etymologically suggests the image of balancing one thing against other, its primary signification is equivalence. It is an extremely difficult task to assess just compensation. Various factors have relevance while assessing compensation. The term signifies that which is given in recompense, an equivalent rendered. "Compensation" is distinguishable from "damage". Latter constitutes the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money of something lost or withheld. No uniform or absolute rule can be laid down for determination of compensation. Where multiplier system method is applied, the multiplier has to be selected bearing in mind the facts and the circumstances of the case. In *Municipal Corporation of Delhi v. Subhagwanti* 1966 ACJ 57 (SC), a multiplier of 15 times was applied for a deceased aged about 30 years. For a deceased aged about 30 years, 16 times" multiplier was held to be reasonable in *The Branch Manager, The Oriental Fire and General Insurance Co. Ltd. Vs. Laxmi Patra and Others*, .

5. Considering all these factors, I feel that the compensation can be fixed at Rs. 70,000 which works out to about 14.5 times" multiplier of the annual loss of dependency in round figures. The award is accordingly modified.

6. So far as the higher rate of interest stipulation is concerned, the argument is novel. It is not disputed by the contesting parties that grant of interest u/s 110-CC of the old Act (corresponding to Section 171 of the Motor Vehicles Act, 1988, in short the "new Act") is discretionary. The purpose for award of interest is to coerce the relevant person not to delay in making the payment; and to compensate the victim or his dependants for such delay as may occur, by way of interest. In determining the quantum of interest awardable under the relevant section, the Tribunal acting u/s 110-A of the old Act corresponding to Section 166

of the new Act can derive direct guidance from Section 34 of the Code of Civil Procedure, 1908 (in short the "C.P.C."). In fact, the provisions require payment of interest in addition to compensation already determined. Even though the expression "may" is used, a duty is laid on the Claims Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The provision is discretionary and is not and cannot be bound by rules. In the words of Lord Cairns, L.C. in *Julius v. Bishop of Oxford* (1880) 5 AC 214 "there may be something in the nature of the thing empowered to be done, something in the object for which it is done, something in the condition under which it is to be done, something in the title of person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so". This classic observation has been quoted with approval by the Supreme Court in several cases. [See *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, and *S.P. Gupta Vs. President of India and Others*, In Halsbury's Laws of England, 4th Edn., Vol. I, it has been observed:

A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be a discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when some conditions are present, but a discretion how to act. Discretion may thus be coupled with duties.

Though Section 110-CC of the old Act (Section 171 of the new Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be called out from Section 110-CC of the old Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not envisaged and prescribed. A view similar to mine was expressed by the Karnataka High Court in *Oriental Insurance Co. Ltd. v. Anantharam Ramachandra Kalluray* 1988 ACJ 367 (Karnataka). I, therefore, direct that the rate of interest as awarded by the Tribunal shall be applicable till payment, without the stipulation for higher rate of interest being enforced.

The miscellaneous appeal is accordingly disposed of. No costs.