(1980) 02 DEL CK 0023

In the Delhi High Court

Case No : F.A.O. No. 190 of 1979

Oriental Fire and General Insurance Co. Ltd. and another — APPELLANT

Vs

Smt. Sushila Jain and others — RESPONDENT

Date of Decision : 29-02-1980

Acts Referred:

Citation : (1980) ACJ 451 : AIR 1980 Delhi 236

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Judgement

1. The only question that has been raised in this appeal from the order of the Motor Accident Claims Tribunal, dated April 25, 1979, is about the award of interest. The husband of respondent No. 1 died in a motor accident in 1971. She and her children brought an application on February 7, 1972, under s. 110A of the Motor Vehicles Act, 1939 (the Act), against Jupiter General Insurance Co. After merger the Oriental Fire and General Insurance Co. appeared on the scene. At first there was some difficulty in knowing about the name of the owner of the offending vehicle and the number of the insurance policy. On October 10, 1973, the policy was shown to the insurance company. Thereafter, the trial proceeded. The company contested the claim. On April 25, 1979, the Tribunal made an award of Rs. 48,000 on account of compensation. The company was granted two months'' time to deposit the amount in the Tribunal failing which the claimants were to be entitled to interest at the rate of 6% per annum from the date of filing the claim petition till realisation. In terms of this order the amount of Rs. 48,000 ought to have been deposited on or before June 25, 1979, but, actually, it was deposited on August 20, 1979.

2. The insurance company made an application to the Tribunal that it should be relieved from the award of interest on a number of grounds, namely, that the order dated April 25, 1979, was not announced in open court, that time was spent in obtaining the certified copy, that the order dated April 25, 1979, was illegal inasmuch as it imposed a punitive condition and that the Tribunal had no

power to make such an order. By order dated November 3, 1979, the Tribunal rejected all these arguments. The Tribunal found that the order was announced in the open court, that the insurance company was guilty of laches and delay in depositing the amount and that there was no ground for condensation of delay. These are findings of fact. The Tribunal in all the circumstances of the case was inclined to exercise its discretion in favor of the widow and the children rather than in favor of the insurance company. It said so many works. True it is that the question of interest is essentially one of discretion.

3. There is only one question : Has the Tribunal power to award interest in the form it did ? Counsel for the insurance company does not dispute that there is power in the Tribunal to award interest under s. 110CC of the Act. His main quarrel is with the form of the order the Tribunal made. As I read this order it means that the Tribunal was making an order of compensation of Rs. 48,000 with interest at the rate of 6% from of Rs. 48,000 is paid within two months then that will amount to complete satisfaction of the Tribunal''s order. There is nothing wrong in granting a concession to a party. The power to award interest is conferred on the Tribunal by the Act. It is a discretionary power. The Tribunal exercised this power in a concessional form. It cannot be called "punitive", as has been urged. That the insurance company did not deposit the amount within two months is not in dispute. The company has forfeited the right to the concession. That is all. It must pay interest on the amount awarded in terms of the order.

4. Equity is invoked by counsel for relieving the company against what he called the "punitive condition". I do not think it is a case in which the court ought to grant relief. The case was fought for seven years or so. The company opposed the claim of the widow and the children tooth and nail. The Tribunal then made the order. Even then it showed concession to the company. The amount was not deposited by reason of bureaucratic delays. This was the finding of the Tribunal. There is nothing unconscionable in an order of this form. No fraud, no oppression, no undue advantage, can be complained of. The statute empowers the Tribunal to award interest .In substance this is what it did. So long as the award of interest is sanctioned by the statute the form of the order is immaterial. The substance of the thing matters. In all the circumstances of the case, I am not prepared to interfere with the discretion of the Tribunal.

5. For these reasons the appeal is dismissed.

