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**(1986) 02 KAR CK 0031**  
**In the Karnataka High Court**

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Anantharam Raamachandra Kalluray and Others

RESPONDENT

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**Date of Decision :** 14-02-1986

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110 CC

**Citation :** (1988) ACJ 367 : (1986) ILR (Kar) 2178 : (1986) 2 KarLJ 249

**Hon'ble Judges :** N. Venkatachala, J;Murlidher Rao, J

**Bench :** Division Bench

**Advocate :** B.V. Acharya, for the Appellant; G. Balakrishna Shastry and Narendrakumar Gunaki, for the Respondent

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## Judgement

1. The scope of the power of a Motor Accidents Claims Tribunal in the matter of award of interest u/s 110CC of the Motor Vehicles Act, 1939 (for short "the Act"), arises for our decision in this appeal. In a personal injury action, respondent No. 1 made a claim for compensation under the Act before the Motor Accidents Claims Tribunal No. III, Belgaum (for short "the Tribunal"), against respondents No. 2, respondent No. 3 and the appellants, who were the driver, owner and the insurer respectively of a motor car bearing Registration No. MYB 9857 alleged to have caused an accident resulting in sustains of personal injuries by him. That claim has been allowed by the Tribunal by an award in the following terms.

"The petition is allowed in part with costs. The petitioner is entitled to and is awarded the awarded the compensation of Rs. 63,715 payable jointly and severally by respondents Nos. 1 to 3 together with simple interest thereon at the rate of six per cent per annum form the date of petition, i.e. May 18, 1982 till the date of the payment. Further, it is ordered that the principal liability to pay this award amount shall be that of the insurer respondent No. 3, who is directed to pay up the same to the petitioner within two months from the date hereof. In the event of default in payment of this award amount by the respondents as ordered, the petitioner shall be entitled to recover the same from them with enhanced interest at the rate of 15 (fifteen)% per annum thereon from the date of petition

till the date of realization thereof. The advocate's fee of Rs. 250 is fixed. "

2. Respondent No. 3, the insurer, has questioned the above award in this appeal only in so far as it relates to provision made therein respecting retrospective enhancement of interest for default in payment of the amount of compensation together with simple interest awarded thereunder before the due date specified therein.

3. Sri B. V. Acharya, learned counsel for the appellant (the insurer), contended that the provision in the award under appeal relating to retrospective enhancement of interest in default of payment of compensation with simple interest awarded thereunder, is liable to be set aside, in that no power to make such provision has been conferred on the Tribunal u/s 110CC of the Act.

4. On the other hand, Sri G. Balakrishna Shastry, learned counsel for respondent No. 1 (claimant), sought to support the provision made in the award relating to retrospective enhancement of interest, relying upon a decision of the Rajasthan High Court in Smt. Chand Kanwar Vs. Mannaram and Others, and that of the Orissa High Court in National Insurance Co. Ltd. Vs. Laxmi Devi and Others,

5. As the said controversy, in our view, has to be resolved with reference to the scope of power conferred on a court or a Claims Tribunal u/s 110CC of the Act in the matter of awarding of interest on compensation to be allowed in a claim made before it, that section is reproduced :

6. Award of interest where any claim is allowed. - Where any court or Claims Tribunal allows a claim for compensation made under this Chapter, such court or 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. "

7. From the language employed in the said section, it becomes clear that a court or a Tribunal is empowered thereunder to direct payment of simple interest on the of compensation to be awarded by it at such rate and from such date no earlier than the date of making the claim of compensation as it may specify in that behalf. No express power is conferred either on the court or on the Tribunal under the section, to make a provision in the award of compensation to be made by it, for retrospective enhancement of interest in default of payment of compensation within the due date nor any implied power in that regard could be inferred therefrom.

8. The said section, it has to be remembered, has been insert in the Act by Amendment Act 56 of 1969 with a view to confer on a court or Tribunal allowing a claim for compensation made under the Act, power to award simple interest no such compensation from such date not earlier than the date of making the claim as the court or the Tribunal may specify in that behalf. The necessity to insert the section arose due to the fact that several High Courts were of the view that in the absence of a statutory provisions providing for payment of interest on

compensation payable under the Act, no interest could be awarded thereon, in that such court or Tribunal created under the statute had no inherent power to do so. When the section so inserted does not empowers the court or the Tribunal either expressly or impliedly to make provision for retrospective enhancement of interest for default in payment of compensation within the due date or specified date, it should be held that the court or the Tribunal is not invested under the section with the power to make such a provision in the award. As the decisions relied upon by Sri Balakrishna Shastry are not rendered with reference to the scope of the power conferred on a court or a Tribunal in the matter of directing payment of interest u/s 110CC of the Act, they cannot be of any assistance in deciding the controversy. In the present case, the provision in the award made relating to retrospective enhancement of interest for made payable thereon, in our view, virtually amounts to a penalty envisaged against the appellants and respondents Nos. 2 and 3 for anticipated default in payment of the amount of compensation awarded, within the due date or specified time, and such provisions has to be regarded as one made by the Tribunal without conferment of any power on it in that behalf under the section. Hence, in our view, there appellant and respondents Nos. 2 and 3 should be absolved from such penalty contained in the provision of the award.

9. In the result, we allow this appeal and set aside the provision in the award under appeal, relating to retrospective enhancement of interest for default in payment of compensation payable thereunder together with simple interest thereon within the specified date.

10. However, parties are directed to bear their respective costs of this appeal.