(2012) 03 DEL CK 0098

In the Delhi High Court

Case No : CM (M) 1348 of 2011

Oriental Insurance Co Ltd. APPELLANT

Vs

Preeti Bhatia and Others RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 152

Citation : (2012) 03 DEL CK 0098

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Pradeep Gaur, for the Appellant; Sanjay Sehgal, Advocate for R-1, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—By a judgment dated 06.04.2012 a compensation of Rs. 37,78,000/- was awarded in favour of the Respondents No. 1 and 2 with interest @ 9% per annum. Para 82 of the judgment is extracted hereunder:-

82. I hereby award a total compensation of Rs. .37,78,000/- (Rupees Thirty Seven lakhs and Seventy Eight thousand only) to the petitioners along with interest @ 9% per annum from the date of filing of the petition till realization of the amount.

2. While directing the Petitioner/Insurance Company to make payment within 30 days, the Claims Tribunal directed payment of future interest @ 12% per annum (in case of delayed payment). The relevant portion of the order is extracted hereunder:-

within a period f 30 days from today, failing with respondent No. 3 Insurance Company shall be liable to pay future interest @ 12% per annum from the date of filing of the petition till realization of the amount.

3. The Petitioner/Insurance Company challenged the impugned judgment mainly

on the ground of award of interest @ 9% per annum. The appeal was later on withdrawn with liberty to Appellant to file cross-objections in case any appeal for enhancement of compensation was filed by Respondents No. 1 and 2.

4. The question of payment of interest on the award came up before the Claims Tribunal on 07.1.2011 when the following order was passed:-

07.01.2011

Sh. Shyam Singh along with Rajni Hari, Assistant Manager for JD/Insurance company.

Main petition was instituted on 28.08.2006 and was decided on 06.04.2010. Payment was made on 17.09.2010. The counsel for insurance company stated that they have paid interest @9% per annum. The payment was to be made within one month from the date of the decision i.e. from 06.04.2010. But the payment was made on20.08.2010.

The counsel for insurance company stated they did not pay interest @ 12% because they went in appeal, but they admitted that there was no stay from Hon''ble High Court. So they are required to pay interest @ 12% from 06.05.2010 till 20.08.2010. Put up on 18.02.2011.

5. Subsequently, on 04.11.2011 the Appellant was directed to pay interest @12% per annum from the date of filing of the petition till the date of payment. The order is extracted hereunder:-

07.01.2011

Ld. Counsel for the DH states that award was passed on 6/4/2010 wherein mentioned that the JD shall deposit the awarded amount in favour of the DH along with upto date interest with UCO Bank High Court Branch within a period of 30 days i.e. 6/5/2010. It is admitted case of the parties that payment of the award amount was made on 20/8/2010. It is also admitted that the appeal preferred against the impugned award has been dismissed by the Hon''ble High Court of Delhi. It is not in dispute that any order of modification of the impugned award has been passed by Hon''ble High Court meaning thereby a judgment/ impugned award shall be presumed to be correct. Now the JD is directed to deposit the balance amount after calculating the interest @ 12% per annum from the date of filing of petition till the last payment made.

Both the parties are directed to file the complete breaks-up of the awarded amount along with the affidavit within a week after exchanging the copies thereof.

6. It is urged by the learned counsel for the Petitioner that it was very clear from para 82 read with para 92 of the impugned judgment that the interest @12% per annum was payable only for the "future" and direction to pay interest @12% per annum from the date of the filing of the petition was not inconsonance with the judgment dated 06.04.2010.

7. On the other hand, it is urged by the learned counsel for Respondents No. 1 and 2 that if there was any clerical mistake in the impugned judgment, the Appellant ought to have approached the Claims Tribunal for clarification u/s 152 CPC. In fact, the matter came up before the Claims Tribunal on 04.11.2011 and the Claims Tribunal preferred to take a view that the interest awarded in case of default in making the payment within 30 days was @12% per annum from the date of filing of the petition.

8. Para 82 read with Para 92 made it crystal clear that the interest was payable @12% per annum only for future. The use of subsequent words "from the date of filing of the petition" created confusion. The future interest as stated by the Tribunal was only from the expiry of period of 30 days from the impugned judgment. The Claims Tribunal, therefore, could not have directed the Appellant to pay interest @12% per annum from the date of filing the Petition. Therefore, the same is set aside. It goes without dispute that the Respondents would be entitled to interest @12% per annum per annum only after the expiry of the period of 30 days from the award.

9. The petition is allowed in above terms.

