(2010) 07 KL CK 0225

In the High Court Of Kerala

Case No : O.A. No. 51 of 2008

Subhadra Antharjanam APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34
Interest Act, 1839 — Section 3

Citation : (2011) 2 ILR (Ker) 107 : (2011) 2 KLJ 236

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : M.P. Ramnath, Sri Sony Vincent and Sri P. Rajesh Kottakkal, for the Appellant; N.B. Sunilnath, (S.C. for Railways), for the Respondent

Final Decision : Allowed

Judgement

Basheer, J.—The short question that arises for consideration in this appeal is whether the Railway Claims Tribunal was justified in refusing to award interest on the amount of compensation found payable by the respondent to the appellant/ claimant.

2. The Tribunal while directing the respondent to pay compensation within 45 days from the date of order held that the appellant will be entitled to get interest @ 6% from the date of default of such payment. In other words, the Tribunal did not award interest to the appellant from the date of the petition, though such a claim was specifically made.

3. Sri M.P. Ramnath, learned counsel for the appellant submits that the order of the Tribunal to the extent it has denied interest to the appellant is manifestly illegal and unsustainable especially in view of the decision of Their Lordships of the Supreme Court in Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, Learned counsel has also invited our attention to the 63rd report of the Law Commission of India apart from the provisions contained in the Interest Act, 1839.

4. The Law Commission in its 63rd report had exhaustively dealt with the history of interest and usury and suggested amendments to the Interest Act, 1839. While doing so, the Commission had referred to the ancient Hammurabi Code and Roman Law as well as the concept of interest in Hindu as well as Muslim Law. The report of the Commission headed by P.B. Gajendragadkar is a real treatise on the subject.

5. The word "interest" is derived from the mediaeval Latin "inter se" and "id quod interest" and signifies the notion of loss or damage suffered by the claimant as opposed to the usurious conception of reward for money lent.

6. Concept of interest and its relationship to usury have had a predominant role in all kinds of transactions from time immemorial. "Interest is a return on a loan or other monetary obligation. To the lender, it is the difference between the money now and money in the future, seen as a profit". Usury is the charging of interest in excess of that allowed by law for a loan of money or for the extension of the maturity of a debt. "Interest is, in general terms, the return or consideration or compensation for the use or retention by one person of a sum of money belonging to, in a colloquial sense, or owed to, another." Rate of interest applicable to a transaction between two parties will depend on the agreement to be entered into between them. Thus interest can be levied at market rate or the agreed rate as the case may be.

7. In Nalini B. v. Union of India and another ILR 2008 3 6 and in Abdul Kareem v. Union of India ILR 2008 3 127, this court had directed the Railway Administration to pay interest on the amount of compensation at the rate of 6% from the date of application. The Division Bench had, for this purpose, drawn analogy from the Motor Vehicles Act and the Workmen''s Compensation Act and held that even in the absence of a specific provision in the Railways Act or in the Railway Tribunals Act, the Railway Administration would be liable to pay interest.

8. In Sarabi''s case (Supra), the Supreme Court has elaborately dealt with the entire issue with specific reference to Section 34 of the CPC and Section 3 of the Interest Act. Their Lordships have also adverted to the earlier decisions touching upon the same subject. After surveying the entire history relating to "interest" under various enactments, Their Lordships held thus:

It is therefore, clear that the Court, while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or awarded, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants.

The Courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during which the money was due, but could not be utilized by the person in whose favour an order of recovery of money was passed. As has been frequently explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilise the money due, which has been, in fact, utilized by the person withholding the same. Accordingly, payment of interest follows as a matter of course when a money decree is passed.

9. Their Lordships summed up the discussion by concluding that "in cases where a money award is made, the principles of Section 34 of the CPC and Section 3 of the Interest Act could be invoked to award interest from the date of the Award till the realisation thereof ".

10. The above conclusion is essentially on the well accepted principle that "payment of interest is basically compensation for being denied the use of the money during the period which the same could have been made available to the claimants".

11. In view of the above pronouncement by the Apex Court, there can be no doubt that the Railway Claims Tribunals are bound to award interest on the amount of compensation payable in cases arising out of untoward incidents u/s 124A of the Indian Railways Act.

12. Therefore, it is held that, the appellant is entitled to get interest @ 6% from the date of filing of the claim petition till the date of the award and thereafter @ 9% from the date of award till the date of realisation. The impugned order is modified to the above extent.

The Appeal is allowed.

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