

(2009) 05 KL CK 0133
In the High Court Of Kerala
Case No : C.A. No. 3568 of 2009

Thazhathe Purayil Sarabi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Arbitration Act, 1940 — Section 9
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 34
Interest Act, 1978 — Section 3
Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 392
Railway Claims Tribunal Act, 1987 — Section 16
Railways Act, 1989 — Section 123, 124, 124A, 127

Citation : (2009) 4 KLT 370

Hon'ble Judges : Mukundakam Sharma, J; Altamas Kabir, J

Bench : Division Bench

Advocate : P.V. Dinesh, for the Appellant; K. Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

Altamas Kabir, J.—Leave granted.

2. On 13th November, 1998, one Kunhi Moosa, the husband of the Appellant No. 1, Thazha the Purayil Sarabi, boarded the Madras Mail from Payyannur Railway Station to go to Madras. He had occupied berth No. 67 in Coach No. S-5, while his brother-in-law and two others who were travelling with him occupied berth Nos. 66 and 26 in the same coach. When the train was about to move from Parappanangadi Railway Station, the said Kunhi Moosa was robbed of the money that he was carrying with him and during the scuffle he was thrown out of the train by his assailants as a result of which he expired. The police registered Crime No. 46/98 in respect of the said incident and the case was taken to the to the Court of Sessions, Kozhikode.

3. In 1999, the appellants filed O.A. No. 68 of 1999 before the Railway Claims Tribunal, Ernakulam, for compensation amounting to Rs. 4 lakhs. On 18th

August, 2006, the accused persons were convicted u/s 392 of the Indian Penal Code ("IPC, for short) and sentenced to 10 years rigorous imprisonment and to pay a fine of Rs. 15,000/- each, in default to undergo rigorous imprisonment for a further period of one year.

4. The Railway Claims Tribunal by its order dated 26th March, 2007, allowed the application in part and in terms of Section 123(c) of the Railways Act, 1989, directed the Union of India and its authorities to pay to the appellants herein compensation of Rs. 4 lakhs, out of which a sum of Rs. 2 lakhs was given to the Appellant No. 1, a sum Rs. 1,50,000/- was allotted to the Appellant No. 2 and Rs. 50,000/- was allotted to the Appellant No. 3. The Railway Claims Tribunal granted 45 days" time to the respondents herein to comply with the order for payment of the compensation amount, failing which it was directed that the appellants would be entitled to 6.5% interest per annum on the award amount from the date of default.

5. The said Award of the Railway Claims Tribunal was challenged before the Kerala High Court at Ernakulam by the appellants herein on the ground that in view of the decision of this Court in Rathi Menon Vs. Union of India, , the claim for compensation would arise from the date of the incident. Such a view was expressed by this Court on account of the fact that the Railways Act, 1989 did not fix the amount of compensation, but left it to be determined by the Central Government from time to time. Reliance was also placed on another decision of this Court in N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another, , whereby 12% interest was granted from the date of application till the date of judgment following the decision in Rathi Menon's case (supra).

6. The Division Bench of the Kerala High Court took the view that even though the interest for the prior period had not been awarded, the Tribunal had awarded interest in case of default in compliance with the order for deposit of the compensation amount. The High Court was of the view that since the Tribunal had applied its mind while making the order and since awarding interest is the discretion of the Tribunal, there was no ground to admit the appeal only on the question of interest. The appeal was accordingly dismissed and the present appeal has been filed by the claimants, namely, the heirs of Kunhi Moosa against the order of the High Court.

7. Having regard to the fact that the Railway Claims Tribunal has awarded the maximum compensation which can be awarded under the Act, the only question which, therefore, falls for decision in this appeal is whether both the said Tribunal and the High Court were justified in not granting interest on the amount of the Award from the date of the incident or from the date of filing of the Claim Petition till actual payment of the awarded sum.

8. Mr. P.V. Dinesh, learned Counsel for the appellant, submitted that in Rathi Menon's case (supra) one of the issue which was touched upon was with regard to the question as to the relevant date from which compensation would be

payable under the relevant provisions of the Railways Act, 1989. While construing the provisions of Section 124A of the aforesaid Act under which the claim for compensation had been made, this Court held that reference to the expression "pay compensation to such extent as may be prescribed" indicated that the right to claim compensation from the Railway Administration would be acquired by the injured from the date of the said incident, which principle was also considered in the case of *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, .

9. Mr. Dinesh also submitted that the question of payment of interest on the compensation awarded was considered by this Court in the case of *Tejinder Singh Gujral Vs. Inderjit Singh and Another*, , which was a case under the Motor Vehicles Act. While considering the question of compensation payable, the question of payment of interest on such compensation also fell for consideration of this Court and it was held that grant of interest was discretionary and was not required to be claimed separately. It was held that interest is granted by way of compensation and has to be reasonable depending upon the facts of the case and taking into account all relevant factors. In the said case, the interest awarded 9% per annum was not interfered with by the Division Bench of the High Court upon reference to the provisions of Section 166 of the Motor Vehicles Act, 1988 and Section 34 of the Civil Procedure Code.

10. In the case of *Dr K.R. Tandon (Mrs) Vs. Om Prakash and Another*, , which was also a claim for compensation under the Motor Vehicles Act, the grant of interest on the compensation award was not only upheld but keeping in mind the surrounding circumstances, this Court also enhanced the rate of interest from 6% to 12% from the date of the application being made. It was held that omission on the part of the Courts below to award interest, irrespective of its rate, from the date of the application was held to be unjustified. Mr. Dinesh submitted that a decision, which was closer to the facts of this case, was referred to by this Court in *Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others*, , in which, while considering the provisions of Sections 123(c)(2), 124-A and 127 of the Rail ways Act, 1989 and the expression "untoward incident" held that the provisions of Section 124-A is in the nature of a no-fault liability in case of railway accidents and a bona fide passenger traveling on a train would be entitled to compensation for such untoward incident irrespective of who was at fault therefor.

11. Mr. Dinesh submitted that payment of interest on any such amount which is held to be due to a person is purely a matter of discretion of the Court, except in cases where a statutory rate of interest is prescribed. Even in cases where no interest is provided for under the statute, the Court, having regard to the provisions of the Interest Act, 1978 and Section 34 of the Civil Procedure Code, is entitled to grant interest in its discretion. Mr. Dinesh submitted that when any amount is due to a creditor and the same is not paid by the debtor over a certain period, the creditor is deprived of the use of the said amount for the period

during which the amount remains unpaid for which he is entitled to be compensated by way of payment of interest. Based On such submissions, Mr. Dinesh urged that both the Tribunal as well as the High Court had erred in not granting interest on the awarded amount.

12. On the other hand, also relying on the decision of this Court in Rathi Menon's case (supra), Mr. K. Radhakrishnan, learned Senior Counsel submitted that the significance of the said decision is that it held that the right to claim compensation is acquired on the date of the incident but the relevant date for determination of compensation is the date of determination by the Tribunal and not the date of incident. Mr. Radhakrishnan submitted that the said decision did not really further the appellants' case since, in any event, the appellants could be awarded interest, if at all, from the date of the Award and not from any previous period. Mr. Radhakrishnan urged that in the instant case a direction had been given by the Railway Claims Tribunal to make payment of the compensation amount within 45 days from the date of the Award, failing which the appellants would be entitled to the interest at the rate of 5 % per annum from the date of default. According to Mr. Radhakrishnan, even if the claim of the appellants was accepted, having regard to the decision in Rathi Menon's case (supra), such claim would be restricted only to the period of 45 days within which period payment of awarded amount was to be made, since in default of such payment, interest would be payable on the awarded sum at the rate indicated in the order. Mr. Radhakrishnan submitted that no interference was called for with the order of the Tribunal and the High Court impugned in this appeal.

13. Admittedly, neither the Railway Claims Tribunal Act, 1987, nor the Railways Act, 1989, make provision for payment of interest on any awarded amount. While Section 16 of the 1987 Act prescribes the procedure for making an application to the Claims Tribunal, the right to receive compensation is contained in Sections 124 and 124-A comprising Chapter XIII of the 1989 Act dealing with the liability of the Railway Administration for death and injury to passengers due to accidents. Even though there is no provision in either of the Acts for payment of interest on the awarded sum, there is no denying the fact that the right to claim compensation accrued on the date of the incident, although, compensation has been held in Rathi Menon's case (supra) is to be computed from the date of the Award of the Claims Tribunal. In cases where the statute does not make any specific provision for payment of interest on any awarded sum, the power of the Courts to grant interest can also be referred to from the provisions of the Interest Act, 1978 and the Code of Civil Procedure. Section 3 of the Interest Act 1978, which confers power on the Court to allow interest reads as follows:

3. Power of court to allow interest.- (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate

of interest, for the whole or part of the following period, that is to say,-

(a) If the proceedings relate to a debt payable by virtue of written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) If the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

PROVIDED that where the amount of the debt or damages has been repaid before the institution of the proceedings interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in Sub-section (1),?-

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death,

then, the power conferred by that Sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the Court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,-(a) shall apply in relation to:

(i) Any debt or damages upon which interest is payable as of right, by virtue of any agreement; or .

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect:

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881; or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the Court to award interest upon interest.

14. As will be evident from the aforesaid provisions, the same, inter alia, provided that in any proceedings for the recovery of any debt or damages the Court may, if it thinks fit, allow interest to the person entitled to the debt or

damages at a rate not exceeding the current rate of interest for the whole or part of the period from the date when the debt is payable to the date of the incident of the proceedings, if such debt was payable by virtue of a written instrument at a certain time or if the proceedings do not relate to any such debt, then, from the date mentioned in any written notice given by the person making a claim to the person liable that interest would be claimed from the date of institution of the proceedings.

15. As indicated hereinbefore, apart from the provisions of the Interest Act, Section 34 of the CPC also empowers the Court to order interest on a decree for payment of money in the following manner:

34. Interest.- (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.- In this Sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II.- For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where -such a decree is silent with respect to the payment of further interest 3 on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

16. 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.

17. 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. The only question to be decided is since when is such interest payable on such a decree. Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings till the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute.

18. Accordingly, we are unable to sustain the order of the Railway Claims Tribunal directing payment of interest on default of the payment of the principal sum within a period of 45 days. As we have indicated hereinbefore, when there is no specific provision for grant of interest on any amount due, the Court and even Tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil Procedure Code.

19. In *M/s. Jagdish Rai and Brothers Vs. Union of India*, , this Court, while considering grant of interest in respect of an amount awarded in an arbitration proceeding u/s 9 of the Arbitration Act, 1940 read with Section 34 of the Civil Procedure Code, observed that there are four stages of grant of interest. Firstly, from the stage of accrual of cause of action till the filing of the arbitration proceedings; secondly, during pendency of the proceedings before the arbitrator; thirdly, future interest arising between the date of the award and the date of the decree; and fourthly, interest arising from the date of the decree till realization of the award. This Court held that although the claim for interest had been made before the Court in which proceedings for making the Award the Rule of the Court were pending, the High Court ought to have further examined whether the appellant was entitled to any interest after the decree was made in terms of the award. This Court went on to observe that the Courts have taken a view that the award on interest u/s 34 of the CPC is a matter of procedure and ought to be granted in all cases where there is a decree for money unless there are strong reasons to decline the same. In the said case, this Court modified the decree of the Court of the Subordinate Judge by including a direction for payment of interest @ 12% per annum from the date when the award was made the Decree of the Court of the Subordinate Judge, till realization.

20. A similar view was expressed by a Three Judge Bench of this Court in Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, .

21. Though, both the two aforesaid cases were in relation to Awards having been made under the Arbitration Act, a principle has been enunciated 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.

22. In the instant case, the claim for compensation accrued on 13th November, 1998, when Kunhi Moosa, the husband of the Appellant No. 1, died on account of being thrown out of the moving train. The claim before the Railway Claims Tribunal, Ernakulam, (O.A. No. 68/1999) was filed immediately thereafter in 1999. There was no delay on the part of the claimants/appellants in making the claim, which was ultimately granted for the maximum amount of Rs. 4 lakhs on 26th March, 2007. Even if, the appellants may not be entitled to claim interest from the date of the accident, we are of the view that the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery, since the appellant cannot be faulted for the delay of approximately 8 years in the making of the Award by the Railway Claims Tribunal. Had the Tribunal not delayed the matter for so long, the appellants would have been entitled to the beneficial interest of the amount awarded from a much earlier date and we see no reason why they should be deprived of such benefit. As we have indicated earlier, 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.

23. In our view, both the Tribunal, as also the High Court, were wrong in not granting any interest whatsoever to the appellants, except by way of a default clause, which is contrary to the established principles relating to payment of interest on money claims.

24. We, therefore, allow the appeal and modify the order of the High Court dated 24.5.2007 affirming the order of the Trial Court and direct that the awarded sum will carry interest (r)6% simple interest per annum from the date of the application till the date of the Award and, thereafter, at the rate of 9% per annum till the date of actual payment of the same.

25. The appeal is allowed to the aforesaid extent. The respondents shall pay the costs of this proceeding to the appellants assessed at Rs. 25,000/-.