

(2011) 10 KL CK 0016
In the High Court Of Kerala
Case No : M.A.C.A. No. 275 of 2007

The National Insurance Company Ltd.	APPELLANT
Vs	
M.K. Moidu and Others	RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 168(2), 171

Citation : (2012) ACJ 2660 : (2011) 4 KLJ 660

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : George Cherian, for the Appellant; K.S. Madhusoodanan and K.M. Firoz and V.P.K. Panicker (AC), for the Respondent

Final Decision : Allowed

Judgement

N.K. Balakrishnan. J.

1. The short question that arises for consideration is whether the direction made by the Tribunal to pay interest at the rate of 12% per annum from the date of petition till the date of realisation, on the appellants' failure to deposit the compensation with interest at 9% within three months from the date of the award is penal in nature and if so whether it is illegal and unsustainable. The learned Tribunal directed that the appellant should deposit the amount determined as compensation with interest at 9% per annum from the date of petition till the date of realisation. The learned Tribunal further directed that if the amount is not deposited within a period of three months from the date of the award, the amount of compensation awarded will carry interest at the rate of 12% per annum from the date of the petition till the date of realisation. The learned counsel for the respondent would submit that there is nothing illegal in the direction so issued by the learned Tribunal, for, the object and purpose of the default clause as aforesaid is to put pressure on the insurance company not to delay but to make them prompt to deposit the amount within the time directed by the Tribunal. It is further contended that the learned Tribunal has only

exercised the discretion judicially and judiciously to ensure that the claimants are not compelled to wait indefinitely for getting the award amount.

2. Since the appellant insurance company raised an interesting question that the direction to pay interest at an enhanced rate after prescribing a specific period of time for deposit is not justified and that it is without jurisdiction, we requested the learned counsel for the claimant and appellant to research and make detailed submissions. We requested Adv. Mr. K.M. Firoz and Adv. Mr. V.P.K. Panicker also to help us as *amicus curiae*. We have heard in detail the learned counsel for the appellant, the counsel appearing for the claimant and also Adv. Mr. V.P.K. Panicker and Adv. Mr. K.M. Firoz.

3. The learned counsel Mr. K.M. Firoz has cited the decisions in *Smt. Rajendra Kumari and Another Vs. Smt. Shanta Trivedi and Others*, , *State of Karnataka and Another Vs. Gopal Ramachandra Nadagouda (D) by LRs. and Another*, , *Dharampal v. U.P. State Road Transport Corporation*, 2008 (2) KLT 691(SC), *Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another*, and *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, .

4. In *Kauhnuma Begaum v. New India Assurance Co. Ltd.* (supra) it was held by the apex court:

Now, we have to fix up the rate of interest. S.171 of the M.V. Act empowers the Tribunal to 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 may be specified in this behalf Earlier, 12% was found to be the reasonable rate of simple interest With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.....

This decision has been quoted with approval by the apex court in subsequent decisions also (See; *United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc.*, and *Dharampal v. U.P. State Road Transport Corporation*, 2008 (2) KLT 691 (SC)). These decisions have been cited by Mr.Firoz to enlighten the court that the question as to what should be the rate of interest would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time. In *Kauhnuma Begaum v. New India Assurance Co. Ltd.* (supra) depending on the bank rate then prevailing, the apex court held that the rate of interest to be awardable u/s 171 of the M.V. Act was 9% per annum. Section 171 of the M.V. Act, 1988 deals with the award of interest which reads:

Award of interest where any claim is allowed.-Where any Claims Tribunal allows a claim for compensation made under this Act, such 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.

No rate of interest is fixed u/s 171 of the M.V. Act. A duty has been bestowed upon the court to determine the rate of interest. Varying rates of interest are being awarded by the Tribunals. Interest is compensation for detention of money. It is being awarded to a party for being kept out of the money which ought to have been paid to him on time. The Tribunals awarded interest at different rates depending upon the bank rate prevailing at the relevant time. In Dharampal's case cited supra, considering the prevailing rate of interest on the date of the passing of the award, i.e., 18.5.2005, the interest was awarded at 7.5% from the date of application till the date of payment. Section 171 of the M.V. Act is in parimateria with Section 110CC of the M.V. Act, 1939. The learned counsel Mr. Firoz has also drawn our attention to the Law Commission Report wherein Chapter II deals with payment of interest. The recommendation was that the rate of interest is to be left to the discretion of the court and that in practice it has been seen to fluctuate widely over the years between 4 to 18% per annum. Therefore, Section 171 as recommended by the Law Commission contemplates that interest should start to run only from the date of making the claim. But the court has the discretion to award interest commencing from a later date. It was mentioned by the Law Commission that as statutory provision is absent, the award of rate of interest has not been uniform and it has varied from Tribunal to Tribunal. Therefore, the Commission suggested that it would be advisable to incorporate statutory provision in this respect. The Commission also thought that as an encouragement to prompt payment, the Tribunal may be given the discretion to specify a particular rate of interest for a stipulated time with a condition that interest at higher rate will become payable in case the amount of compensation is not deposited within the stipulated time. It was submitted at the Bar that though the Commission has recommended such a provision, the Parliament in its wisdom did not make a provision for enhanced rate of interest in case the amount of compensation is not deposited within the time stipulated. Therefore, the submission made by the learned counsel is that there is no legislative mandate empowering the Tribunal to award enhanced rate of interest in case of failure to deposit the amount. The further submission is that even in the report submitted by the Law Commission it was not suggested that the enhanced rate of interest/default interest is awardable retrospectively with effect from the date of petition. Hence the learned counsel submits that it would be illegal and without jurisdiction for a Tribunal to award "default interest" with retrospective effect after it ordered the rate of interest payable by the insurance company on the award amount payable within the prescribed time.

5. In Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, the apex court held that the claimants shall be entitled to interest at 8% per annum from 1.3.1972 to 31.3.1985 and thereafter from 1.4.1985 till the date of payment at 12% per annum. It was further directed that if the compensation

amount is not paid till 31.10.1994, the compensation amount shall thereafter carry interest at the rate of 15%. In *Smt. Rajendra Kumari and Another Vs. Smt. Shanta Trivedi and Others*, which was dealt with under M.V. Act, 1939, the apex court ordered that the amount of compensation shall be deposited within two months from date of award and in default, the decretal amount or so much as will remain outstanding will bear interest at 12% per annum till realisation.

6. In *United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc.*, it was held by the apex court that the interest is payable on the equitable grounds to the aggrieved person who is deprived of using the money which is due and payable to him. In that case interest was awarded at the rate of 9% per annum. In *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, it was held that the question as to what should be the rate of interest, would depend upon the facts and circumstances of each case and that normally the award of interest would depend upon the bank rate prevailing at the relevant time. In that case also interest was awarded at the rate of 9% per annum. In *Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others*, the rate of interest was awarded at the rate of 7.5% per annum. Mr. K.M. Firoz, the learned counsel submits that in *Smt. Rajendra Kumari and Another Vs. Smt. Shanta Trivedi and Others*, the apex court directed that the award amount should be deposited within two months from the date of the award and in default it was directed that the decretal amount or so much thereof as will remain outstanding will bear interest at 12% per annum till realisation. But the learned counsel for the appellant-company would submit that no ratio as such was laid down by the apex court in that case even though in that particular case the differential rate of interest was adopted by the apex court In *Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad*, which was a case dealt with under me M.V. Act, 1939, it was held that the claimants shall be entitled to the interest at the rate of 8% from 1.3.1972 to 31.3.1985 and thereafter from 1.4.1985 till the date of payment at the rate of 12% per annum. It was further directed that in case me condensation is not paid till 31.10.1994, the amount shall thereafter carry interest at the rate of 15%. The judgment in that case was pronounced on 13.7.1994. The learned counsel for the appellant would submit that in that case also though the Honourable Supreme Court adopted differential rates of interest, it was not held to be followed as a precedent that differential rates of interest should be adopted in all cases. The decision in *Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another*, was a case dealt with under me Railway Claims Tribunal Act In that case it was held that there is no provision in either of the Acts (the Railways Act or the Railway Claims Tribunal Act) for payment of interest on the awarded sum and that even if the statute does not make any specific provision for payment of interest on the awarded sum, the power of the courts to grant interest can be referred to from the provisions of the Interest Act. This decision has no relevance to the case on hand since under the M.V. Act there is specific provision directing payment of interest on the award amount. For the same reason, the decision in *State of Karnataka*

and Another Vs. Gopal Ramachandra Nadagouda (D) by LR.s. and Another, cited by Mr. Firoz also has no application.

7. The ratio decidendi of a case is the principles and reasons on which the judgment is based. It is distinct from the relief finally granted or the course or manner adopted by the court for the disposal of a particular case. The ratio decidendi of a judgment is its reasoning which can be relied only upon reading the same in its entirety. The court cannot read me relief portion of the judgment, where the interest was allowed at a particular percentage, to hold that it should be construed as the principle laid down by the court in that decision.

8. The decision of the Gujarat High Court in New India Assurance Co. Ltd. v. Shanabhai Arambhai and another, 1987 ACJ 688 has also been cited by Mr. Firoz. Learned Advocate for the appellant in that case contended that the Tribunal ought not have awarded penal interest at 12%, Advocate for the claimants therein relied upon the decision in Sukhbinder Kaur and Others Vs. Nirmolak Singh and Others, in which the apex court awarded 12% interest to support the judgment rendered by the Tribunal awarding interest at 12% per annum on failure to pay the award amount. It was held by the Division Bench in New India Assurance Co. Ltd. Vs. Shanabhai Arjanbhai and Another, that there was no question of awarding any penal interest by the Tribunal, but the Tribunal has given only direction that if the amount is not paid within three months, then after that date the rate of interest shall be 12% from the date of the award. Taking into consideration the prevalent rate of interest, it was held that it cannot be said that the interest awarded by the Tribunal is in any way excessive and hence the appeal filed by the company was dismissed. Therefore, Mr.Firoz would submit that if the award amount is not deposited within the stipulated time, then the Tribunal would be justified in directing payment of interest at a higher rate from the date of the award and if so it cannot be termed as penal in nature. In that case also interest was not awarded retrospectively from the date of the petition but only from the date of the award. Therefore, the aforesaid decision also, according to the learned counsel for the appellant, cannot justify the award of enhanced rate of interest retrospectively from the date of the petition if there be default in making payment within the stipulated period.

9. The learned counsel for the appellant-company has relied upon the decision of the apex court in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, . In the above decision it was held:

Though S. 110CC of the Act (corresponding to S. 171 of the New Act confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of

compensation. No express or implied power in this regard can be culled out from S.110CC of the Act or S.171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

As per the impugned judgment, the Tribunal directed that the award amount will carry interest at the rate of 9% per annum from the date of petition till the date of realisation. There is a further direction that on failure to deposit the amount within three months from the date of the judgment, the award amount will carry interest at the rate of 12% per annum from the date of petition till the date of payment. The learned counsel for the appellant-company would submit that since the apex court has laid down the law that such a direction in the award for retrospective enhancement of interest for default would amount to imposition of penalty which is not statutorily envisaged and prescribed, it has to be held that the direction made by the Tribunal in the impugned judgment that on failure to deposit the award amount within three months from the date of the award, the amount of compensation will carry interest at the rate of 12% per annum from the date of petition till the date of realisation is penal in nature. The learned counsel for the claimant would submit that in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, it was not held by the apex court that the enhanced rate of interest should not be ordered prospectively, i.e., if the company fails to deposit the amount within the time prescribed, then the award amount would carry interest from that date onwards till the date of payment at an enhanced rate of interest. But that enhanced rate of interest should also be reasonable. The learned counsel for the claimant would submit that the direction to pay enhanced rate of interest on failure to pay the award amount within a particular period will certainly be a pressure on the insurance company to deposit the amount without delay so that the party would be able to realise the award amount at the earliest without making them wait indefinitely. If the enhanced rate of interest directed to be paid is reasonable and if it is directed to be paid only prospectively, then certainly it cannot be termed as penal.

10 The learned counsel for the insurance company would submit that there is a practical difficulty in ordering enhanced rate of interest on failure to deposit the amount within the time prescribed by the Tribunal especially because difficulties are experienced by the counsel appearing for the insurance companies to get the certified copy of the award from the Tribunal immediately so as to effect deposit of the award amount within the time prescribed. The learned counsel submits that it often takes months together to get the certified copy or free copy of the award and that after getting copy of the award, the same has to be sent to the Head Office or Regional Office concerned and so reasonable time may have to be there for processing and causing deposit of the amount after calculating interest

till the date of payment. Section 168(2) of the Motor Vehicles Act, 1988 reads:

The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

If the aforesaid provision is scrupulously followed, then there may not be any difficulty for the insurance company to deposit the amount within the time prescribed. But the learned counsel for the insurance company would submit that most often it is not properly adhered to, presumably because of the huge pendency of cases in some of the Tribunals. Therefore, if the Tribunal directs enhanced rate of interest to be paid on failure to deposit the award amount within the time prescribed in the order, then the Tribunal should see that the copy of the award is furnished to the insurance company within 15 days as required u/s 168(2) of the Act so that the object sought to be achieved can certainly be achieved. In such cases, if the award amount is not deposited within the time prescribed, the Tribunal would be perfectly justified in awarding enhanced rate of interest, but it should be reasonable and payable only from that date till the date of payment; but not retrospectively.

11 It is worthwhile to mention here that by the advent of computer technology, especially after the computerisation of Courts/Tribunals there may not be much difficulty in getting the fair order/judgment ready on the date of pronouncement of the judgment or at least within a couple of days. The litigants are also entitled to get the benefit of advancement of technology. It is stated that computers have been provided to all the Tribunals. Therefore, the Tribunals must ensure that the copies of the judgments/awards are made available to be furnished to the claimants as well as to the Insurance Company without delay so that the Insurance Company can effect deposit of the amount without undue delay. In the light of what is stated above, we hold that the impugned order of the Tribunal so far as it relates to the direction to pay interest at the rate of 12% per annum from the date of petition till the date of realisation in case the appellant (third respondent before the Tribunal) fails to deposit the amount within three months from the date of the award is liable to be set aside.

12 In the result, this appeal is allowed. The impugned order of the Tribunal directing the appellant/third respondent to pay enhanced rate of interest at 12% per annum from the date of petition till date of realisation on the appellant's failure to deposit the amount within three months from the date of the award is set aside. We place on record our deep appreciation for the assistance rendered by Adv. M/s. K.M. Firoz and V.P.K. Panicker as amicus curiae.