(2002) 04 OHC CK 0042

In the Orissa High Court

Case No : Miscellaneous Appeal No. 344 of 1998

The United India Insurance Company Ltd. APPELLANT

Vs

Upendra Kumar Dalai and Another RESPONDENT

Date of Decision : 26-04-2002

Acts Referred:

Citation : (2002) 2 OLR 66

Hon'ble Judges : M. Papanna, J

Bench : Single Bench

Advocate : A.K. Mohanty, M.C. Nayak and B.N. Mohanty, for the Appellant; S.C. Sahoo, A.N. Sahoo, A.B. Mohanty and C.R. Das, for the Respondent

Final Decision : Dismissed

Judgement

M. Papanna, J.—This 1s an appeal filed by the United India Insurance Company Ltd. against the award passed by the 4th Motor Accident Claims Tribunal (in short ''Tribunal''), Puri in Misc. Case No. 184/ 639 of 1993/ 1989.

2. Relevant facts of the case leading to the present appeal are as follows :

The petitioner before the Tribunal (here-in-after referred to as the ''Claimant'') made a claim of Rs. 1,50,000/- as compensation on account of severe injuries caused to him in a motor vehicle accident involving the truck bearing registration No. A.N.N. 2988 belonging to one B. Nayak Bhusan Guadiwada (Respondent No. 1). Because of the injuries sustained by him, the Claimant was hospitalised for a long period. However, his right leg from his hip was amputated ultimately. His left leg was also fractured in the said accident. He has been rendered totally disabled for which he is unable to carry on even his daily duties as a human being.

3. The learned Tribunal adjudicated the claim petition and awarded Rs. 1,45,000/- in favour of the Claimant with interest at the rate of 12% per annum from the date of application till realisation. While passing the impugned order, the Tribunal gave a concession to the appellant to pay the compensation within two months from the date of the order i.e. 17.2.1998 failing which the Claimant

would be entitled to the interest at the rate of 12% per annum on the compensation amount from the date of application i.e. 18.9.1989 till realisation.

4. Admittedly, the appellant did not pay the compensation amount within time stipulated and instead the amount was paid to the Claimant four months after the concession period i.e. 22.6.1998. In the meantime, a Certificate Case No. 92 of 2002 for realisation of the balance dues was also initiated.

5. In this appeal, the appellant only challenged the interest allowed by the Tribunal.

6. Mr. A. K. Mohanty, learned counsel appearing for the appellant has contended that the direction of the Tribunal to pay interest at the rate of 12% per annum retrospectively from the date of application in default to pay the compensation amount within two months from the date of award is illegal and without jurisdiction. The learned counsel for the appellant has also contended that the appellant being a Public Sector Statutory Body can act upon basing on the certified copy of the impugned order dated 17.2.1998 but though application was made for certified copy on the very next day of the award, the copy was delivered only after 54 days from the date of the said application. As such the appellant is not liable to pay interest and that too penal interest from the date of application.

7. On the other hand, learned counsel Shri S. C. Sahu appearing for the Claimant-Respondent No. 1 has contended that the Tribunal has rightly directed the appellant to pay interest at the rate of 12% per annum on his failure to pay the compensation amount with in time stipulated. In support of his contention, he has relied upon some decisions of the Apex Court which shall be referred to in course of discussion as below :

8. In view of the contentions raised by the learned counsel for both the sides, we are called upon to examine if the Tribunal was justified in directing the appellant to pay interest at the rate of 12% per annum from the date of the application.

9. Let us quote the ordering portion of the Tribunal as below :

"The misc. case is allowed in part on contest against the opposite party No. 2 and ex parte against opposite party No. 1. The opposite Party No. 2. United India Insurance Company Ltd. is directed to pay compensation amount of Rs. 1,45,000/- to the petitioner within two months hence.

XXX XXX XXX XXX In case the compensation amount is not paid /deposited within two months hence, the petitioner shall be entitled to get interest on the compensation amount at the rate of 12% per annum from the date of claim i.e. 18.9.1989 till realisation.

10. The law is well settled that the awarding of interest by Motor Accident Claims Tribunal is not punitive. Therefore, the only point for adjudication now is whether the Tribunal has jurisdiction to direct the appellant to pay interest at the rate of

12% per annum if the award amount is not paid within two months. The law is well settled that the Claims Tribunals can pass the award of compensation directing the Insurance Company to deposit the compensation amount within time stipulated failing which interest would be payable from the date of filing of the case till realisation. The order in respect of interest cannot be said to be beyond jurisdiction of the Tribunal since the Tribunal is passing the order for compensation with the concession that if the amount is paid within two months, that would amount to the satisfaction of the Tribunal''s order. That being so, there is nothing wrong in granting a concession to a party. It is also the view taken by all the High Courts that the power to award interest is a discretionary, power of the Tribunal. In the present case, the Tribunal has exercised its power in a concessional form. Hence, it cannot be called punitive. That being so, the contention of the learned counsel for the appellant is not acceptable.

11. In the case at hand, the Tribunal awarded interest at the rate of 12% per annum on the compensation amount from the date of application till realisation, but the Tribunal gave a concession to the appellant to pay the compensation within two months from the date of the award which amounts to full satisfaction of the compensation amount. This concession is fully justified and the same is within the jurisdiction of the Claims Tribunal. Had the appellant paid the amount within two months, there was no necessity to pay any interest. But the appellant having not availed the concession, cannot challenge the order saying that passing of the order in such a form amounts to payment of interest at the penal rate. In fact the appellant has forfeited his right to avail the concession.

12. The law on the subject as laid down by the Apex Court may be referred to as follows :

In . 2000 (1)T.A.C 1, (Smt. Sneha Dutta and Anr. v. H.R.T.C. and Anr.) Supreme Court enhanced compensation amount by Rs. 1,45,000/- besides giving, additional amount of Rs 50,000/- by way of interest. This amount of Rs. 1,95,000/-was directed to be paid within six weeks. If additional amount awarded by the Supreme Court is not deposited within the stipulated period, interest would be charged at the rate of 12% per annum till deposited. In 1994 (2) T.A.C. 169 (Hazi Zainnualah Khan (dead) by L. Rs. v. Nagar Mahapalika, Allahabad), the Supreme Court awarded interest at the rate of 8% from the date of filing of petition i.e. 1.3.1972 till 13.3.1985. Thereafter from 1.4.1985 till the date of payment, the Claimant shall be entitled to 12% interest. If the compensation is not paid till 31.10.1994 the amount shall carry interest at the rate of 15%.

13. In 1998 (1) T.A.C. 425 (Sanwal Ram and Anr. v. Mustak Ahmad and Ors.) direction was issued to pay interest to the Claimant at the rate of 12% per annum from the date of filing of the petition till payment.

14. In view of well established position of law as quoted above the Tribunal in the present case has rightly awarded interest from the date of filing of the

application till realisation and that too by giving a concession period to deposit the compensation amount and following non-payment with in that period to pay interest at the rate of 12% per annum. Therefore, I am of the considered view that there is absolutely no illegality committed by the Tribunal in awarding interest at the rate of 12% which cannot be considered as penal or punitive and as such, the appeal merits no consideration. Hence, I see no reason to interfere with the impugned order.

15. In the result, the appeal is dismissed accordingly, but without cost.