

**UNREPORTABLE**

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**FAO No. 247/2008**

**Date of Decision: April 07, 2010**

SAURASHTRA CHEMICALS LTD .....Appellant  
Through Mr. Ravinder Zadoo, Advocate

versus

UNION OF INDIA ..... Respondent  
Through Mr. Sanjay Kumar Pathak, Advocate

**CORAM:**  
**HON'BLE MISS JUSTICE REKHA SHARMA**

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

**REKHA SHARMA, J. (ORAL)**

The only grievance of the appellant in the present appeal is that though it has been awarded compensation to the tune of Rs.5,14,080/- by the Railway Claims Tribunal, Principal Bench, Delhi, but no interest thereon has been awarded from the date of the application. In so far as the interest part is concerned, the impugned order states that in case the respondent fails to make payment within six weeks of the order, the applicant will be entitled to interest on the decretal amount @ 6% per annum from the date of the order till realisation.

The learned counsel for the appellant has relied upon three judgments of this Court; one passed in the case of *M/s. National*

*Insurance Company Versus Union of India*, FAO No. 218/2004 dated February 15, 2006; another in the case of *M/s. Dharam Sons Versus Union of India*, FAO No. 144/1991 dated November 11, 2003 and yet another in the case of *Union of India Versus Sandeep Kalra*, FAO NO. 346/2003 dated December 8, 2003. In all these three judgments, the interest has been awarded on the compensation amount from the date of the application till realisation.

The learned counsel for the respondent has opposed the prayer for grant of interest from the date of the application till realisation relying upon a judgment of the Bombay High Court reported as *Union of India Versus Sanjay Sampatrao Gaikwad* in AIR 2002 BOMBAY 436.

The aforesaid judgment of the Bombay High Court which has been relied upon by the learned counsel for the respondent finds mention in the judgment of this Court in the case of *Union of India Versus Sandeep Kalra (Supra)*. This Court has disagreed with the view taken by the Bombay High Court. It will be appropriate to refer to paragraphs 4,5,6 and 7 of the judgment in *Union of India Versus Sandeep Kalra* for it is in those paragraphs that the judgment of the Bombay High Court has been dealt with by this Court. The said paragraphs read as under :-

“The only other plea raised by the learned counsel for the appellant is that the Railway Claim Tribunal has awarded interest @ 6% from the date of the application. The learned counsel for the appellant has relied upon the judgment of Bombay high Court in *UOI Vs. Sanjay Sampatrao Gaikwad*, AIR 2002 Bombay 436 to contend that the interest should be payable from the date of the award and not the date of the application before the Tribunal. In the aforesaid judgment, it has been held that the liability to pay compensation or damages is payable from the date of the award on the ground that the liability to pay

the compensation or damages is not fastened as soon as the accident takes place.

I find myself unable to agree with the view taken by the Bombay High Court. The eventual judicial determination of the liability cannot affect the date of the liability which is certainly from the date of the application, if not from the date of the incident itself. The decision of the Hon'ble Supreme Court in Exec. Engineer Dhenkanal, Minor Irrigation Division Vs. N C Budharaj, 2001 (2) SCC 721 has held as follows in paragraphs 25 and 26.

“25.....The submission that the arbitrator cannot have jurisdiction to award interest for the period prior to the date of his appointment of entering into reference which alone confers upon him, power, is too stale and technical to be countenanced in our hands, for the simple reason that in every case the appointment of an arbitrator or even resort to court to vindicate rights could be only after disputes have cropped up between the parties and continue to subsist unresolved and that if the arbitrator has the power to deal with and decide disputes which cropped up in a point of time and for the period prior to the appointment of an arbitrator, it is beyond comprehension as to why and for what reason and with what justification the arbitrator should be denied only the power to award interest for the pre-reference period such interest becomes payable and has to be awarded as an necessary or incidental to the sum awarded as due and payable, taking into account the deprivation of the use of such sum to the person lawfully entitled to the same.

“26.....For all the reasons stated above, we answer the reference by holding that the arbitrator appointed with or without the intervention of the court has jurisdiction to award interest on the sums found due and payable, for the pre-reference period, in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest. The decision in Jena case taking a contraview does not lay down the correct position and stands overruled prospectively, which means that this decision shall not entitle any party nor shall it empower any court to reopen proceedings which have already become final, and apply only to any pending proceedings. No. Costs.

Even though the above position of law was laid down in context of arbitrations, the principles laid down relating to payment of interest for the pre-reference period apply in the present case also. Section 2(a) of the Interest Act, 1978 is relevant and reads as under :

‘Definitions – in this Act, unless the context otherwise requires, --

‘Court’ includes a tribunal and an arbitrator.’

This definition under Section 2(a) of the Interest Act of a Court, which includes, arbitrators and tribunals, makes it very clear that the tribunals can also award interest in the manner similar to courts (unless there is specific exclusion) and consequently interest can even be awarded for a period prior to the claim ie., from the date of the accident in the present case. Even in 2003 (3) SCC 148, *Abat Bezbaruah Vs. D D Geological Survey of India and Another*, the Hon’ble Supreme Court has held that in a Motor Accident claim case 9% interest should be paid for a fatal accident and the payment of interest upto 9% cannot be termed excessive”

I have gone through the judgment of both the Bombay High Court as well as of this Court in the case of *Union of India Versus Sandeep Kalra (Supra)*. I lean in favour of the judgment of the Court and hence follow the same. Accordingly, I hold that the appellant shall be entitled to interest on the sum of Rs. 5,14,080/- @ 8% per annum from the date of the filing of the application till realisation. The appellant shall also be entitled to cost of Rs. 5,000/-.

It is stated by learned counsel for the respondent that the sum of Rs. 5,23,076/- has already been paid to the appellant on August 9, 2008 which includes the principal amount as well as the interest component as ordered by the Tribunal. In view of the payment so made, the respondent shall be entitled to make the necessary adjustments while making the balance payment in terms of the present order.

With this direction, the appeal is disposed of.

**APRIL 7, 2010  
PC.**

**REKHA SHARMA, J.**