

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

+ **CM. 16728/2008(delay) & FAO.No.396/2008**

% *Reserved On: 11.11.2010*
Decided On: 19.11.2010

GAYATRI DEVI AND ORS. Petitioners
Through: Mr.K.S.Anand, Mr.A.K.Nayar, Advs.

Versus

UNION OF INDIA Respondent
Through: Mr.A.S. Dateer, Mr.Hari Om Sharan,
Ms. Saroj Bidawat, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **MOOL CHAND GARG,J.**

C.M.16728/2008

In view of the facts given in the application and in the appeal and taking into consideration all the circumstances of the case and also noting that appellant No.2 to 5 are minors, the application is allowed and the delay in filing the appeal is condoned.

FAO 396/2008

1. The only question raised by the appellants, who are the dependants of the deceased Ashok Kumar Singh who succumbed to his injuries in an untoward accident, and have been awarded compensation of ₹ 4,00,000/- along with interest @9% p.a. from the date of the order passed by the Tribunal till the date of actual payment is that the interest should have been awarded to them w.e.f. the date of filing of the claim petition.
2. They have made the following prayers:
 - i. Allow the present appeal and allow interest @ 9% on the amount of impugned order/judgment dated 02.05.2008 from the date of filing of claim petition before Railway

Claims Tribunal, Delhi till actual payment made by the respondent in the interest of justice.

- ii. Further allowed litigation costs of ₹15,000/- in favour of the appellants and against the respondent.
- iii. Any other and further order/s as this Hon'ble Court deems fit and proper in the present facts and circumstances of the case be passed in favour of the appellant.

3. The appellants have relied upon the judgment delivered by the Supreme Court in the case of Chameli Wati & Anr. Vs. Delhi Municipal Corporation & Ors., 1985 ACJ 645 wherein while dealing with the case of motor accident and taking note of the interest awarded in that case @ 6% p.a. from the date of this judgment, the Apex Court observed that:-

“We are of the view that the Division Bench of the High Court erred in the exercise of its discretion under Section 110-CC of the Motor Vehicles Act, 1939 in not awarding interest on the amount of compensation finally determined by it from the date of the application. It is undoubtedly true that under Section 110-CC, the Division Bench of the High Court had discretion to award interest at such rate and from such date not earlier than the date of the application as it may think fit in the exercise of its discretion. But it is well settled that every discretion conferred by statute must be exercised judicially on the basis of the facts and circumstances of a particular case. Here when the learned Single Judge enhanced the amount of compensation, he awarded interest on the enhanced amount @ 6% per annum from the date of his judgment and the Division Bench also when it further enhanced the amount of compensation, directed that interest at the rate of 6% per annum be paid on the enhanced amount from the date of its judgment and not from the date of the application. The learned Single Judge as well as the Division Bench totally ignored the fact that the enhanced amount of compensation awarded by them was in their judgment the correct amount of compensation payable to the appellants on account of the death of the deceased resulting from the accident. The learned Single Judge and the Division Bench should have therefore awarded interest on the enhanced amount of compensation from the date of the application. We accordingly set aside the judgment of the Division Bench as also the judgment of the learned Single Judge in so far as these judgments direct that interest shall be payable on the enhanced amount of compensation from the date of the respective judgments and instead, ***we direct that interest shall be payable on the enhanced amount of compensation as finally determined by the Division***

Bench at the rate of 12% per annum from the date of the application for compensation. The respondents will of course get credit for the amounts already paid by them to the appellants from time to time and interest shall be calculated taking into account such payments. The amount directed to be paid to the appellants under this order shall be paid within 2 months from today."

4. I may also take note of a Constitution Bench judgment of the Apex Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr. (1976) 1 SCC 289, where the issue as to when the liability to pay compensation arises, has been discussed. The relevant discussion appears in para 4, 6 and 7 of the said judgment, which reads as under:-

“4. It has not been disputed before us that the injury in question was caused to the respondent by an accident which arose out of and in the course of his employment with the appellant. It is also not in dispute that the injury resulted in amputation of his left arm at the elbow. It has however been argued that the injury did not result in permanent total disablement of the respondent, and that the Commissioner committed a gross error of law in taking that view as there was only partial disablement within the meaning of Section 2(1)(g) of the Act which should have been deemed to have resulted in permanent partial disablement of the nature referred to in item 3 of Part II of Schedule I of the Act. This argument has been advanced on the ground that the amputation was from 8" from tip of acromion and less than 4 1/2" below tip of olecranon. As will appear, there is no force in this argument.

6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant under Section 4A(3) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under Section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section, provides that the employer shall be liable to pay compensation if "personal injury is caused to a workmen by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workmen by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the

compensation did not fall due until after the commissioner's order dated May 6, 1968 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. ***The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.***”

5. In view of the aforesaid, the interest is payable to the appellants on the awarded amount of compensation @ 9 % p.a. with effect from the date of filing of the claim petition. No other relief is granted to the appellants.

6. The arrears of interest shall be paid to the appellant Smt. Gayatri Devi on her as well as on behalf of other respondents who are minor children of the deceased by way of a cheque drawn in the name of respondent No.1, Gayatri Devi. The amount shall be utilized by her for the welfare of the minor children also and for that purpose she will furnish a bond at the time of receipt of the aforesaid amount. The arrears of interest as would be calculated in terms of the orders passed today shall be paid within a period of one month from today. In case there is any further delay in making the aforesaid payment, the arrears of interest will carry further interest @ 9% p.a. from the date of this order till the date of payment.

7. The appeal stands disposed of.

8. A copy of this order be sent to the Railway Claims Tribunal, Delhi for information.

MOOL CHAND GARG,J

NOVEMBER 19, 2010

‘anb’