

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

**REVIEW APPLICATION NO.08 OF 2016
IN
FIRST APPEAL NO.905 OF 2010.**

Shri Rangnath S/o Gangadhar Ghule,
Age 66 years, Occ.Nil,
R/o Jogeshwari, Akhada, Tq.
Rahuri, Dist.Ahmednagar. ... Petitioner.

Versus

1.Shaikh Rashid Nasheer,
Deceased through legal
representatives :

1-A) Shaikh Rashida Rashid,
Age major, Occ.Household,

1-B) Mujain Rashid Shaikh,
Age major, Occ.Trader,

1-C) Firoj Rashid Shaikh,
Age major, Occ.Trader,

1-D) Mushir Rashid Shaikh,
Age major, Occ.Nil,

All 1-A to 1-D) R/o Vilad,
Tq. and Dist.Ahmednagar.

2. New India Assurance Co. Ltd.,
Branch at Ahmednagar,

3. Western Hatcheries Ltd.,

(Fast Food Dvn.),
Village Baur, At Post
Kamshet, Tq.Haveli,
Dist.Pune.

... Respondents.

...

Mr.Kolse Patil Madhukar G., advocate for the
Applicant.

Mr.R.P.Bhumbar, advocate holding for Mr.Arun
Kanade, advocate for Respondent No.2.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 05.04.2016.

PER COURT :

1. The Review is filed to the extent of non-grant of interest from 2005 and also rate of interest. Mr.Patil, learned counsel for the Review Applicant submits that the Insurance Company is added as a party since beginning. As Insurance policy was not produced, claim petition was rejected vide order below Exh.34, thereafter the matter came up in appeal. In appeal, the matter remanded back to the trial Court. Thereafter, the claim petition was partly allowed. The said award of the trial Court was assailed in the appeal for enhancement of

compensation. The same was partly allowed by this Court. However, interest is awarded from 10.8.2007 instead of granting it from 5.5.2000. Rate of interest was also awarded at the rate of 7.5%, which ought to have been awarded at 9% p.a. The learned counsel submits that awarding rate of interest from the date of petition is a rule. Normally, the rate of interest should be awarded from the date of application.

2. According to the learned counsel, certified copy of the claim petition is produced which would show that the Insurance Company is a party since beginning.

3. Mr.Kanade, the learned counsel for Respondent Insurance Company supports the order under review and submits that subsequent purchaser was added in the year 2007, as such award of interest from 2007 is proper.

4. I have considered the submissions. There can not be any dispute with the proposition that the interest if the claim is allowed,

normally is to be awarded from the date of petition.

5. It appears that the petition has been filed in the year 2000. In the year 2004 the petition has been dismissed vide order below Exh.34 as against Insurance Company. Thereafter, the claim was decreed against the owner defendant No.1 only. The appeal was filed. The matter was remitted back and thereafter the claim to the extent of Rs.40,000/- was allowed by the Tribunal even against the Insurance Company and the present Respondent No.3 who was added in 2007 as a party.

6. The claimant filed appeal for enhancement of compensation. This Court enhanced compensation to the extent of Rs.2,00,000/- (Rupees two lacs) from Rs.40,000/- (Rupees forty thousand), however, the rate of interest was awarded 7.5 % with effect from 10.8.2007. It would appear that the Respondent No.3 was added as a party in the claim petition only in the year 2007.

7. The Tribunal in the impugned judgment in the First Appeal had observed that the Insurance Company is added subsequently in the year 2007. This Court relied on the said observations and awarded interest from the year 2007. In the present Review Application certified copy of the claim petition is produced on record which would show that the Insurance Company was added since very inception of the claim petition i.e. 5.5.2000 and the observations of the Tribunal in the judgment which was assailed in the appeal was erroneous to the extent that the Insurance Company was added subsequently in the year 2007.

8. Considering the above, there appears error on the face of record with regard to the grant of interest from 2007 and not from 5.5.2000. Interest is awarded at 7.5 per cent which is normal rate of interest in the present scenario.

9. In the result, the Review Petition is partly allowed. The judgment and order of this

Court dated 20.10.2015 in First Appeal No.905/2010 is reviewed to the extent that the petitioner is entitled for interest at the rate of 7.5 per cent p.a. from 5.5.2007 till realisation. Rest of the order is maintained. No costs.

(S.V.GANGAPURWALA, J.)

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