THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.2708 of 2012

ORDER:

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief:

> "   **For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, to declare the inaction on the part of the 3rd respondent in depositing the interest amount of Rs.81,525/- inspite of completion of the time granted in I.A.No.4 of 2011 in W.C.No.38/2007 (F) dt.25-4-2011 passed by the 1st respondent herein, as being illegal and arbitrary and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.**"
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> (Reproduced verbatim)

The respondents 1 and 2 are stated to be proforma parties and not necessary parties to this writ petition.

2. The case as set out in the writ petition and the facts necessary for consideration, in brief, are as follows:

The petitioner, who is the mother of the deceased-G.Veerender @ G. Veerender Sagar, had filed a case in W.C. no.38 of 2007 (F) under the provisions of the Workmen's Compensation Act before the learned Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Mahabubnagar and had claimed compensation for the loss sustained by her owing to the untimely death of her son due to his involvement in an accident that had occurred on 06.02.2007 out of and during the course of his employment under the 1st opposite party as a driver on the Truck bearing registration no.CG-07-ZC-0605, which was insured with the second opposite party/insurer. The 1st respondent herein, i.e., the Commissioner for Workmen's Compensation-cum-the Assistant Commissioner of Labour by his orders dated 23.11.2009 had awarded a compensation of Rs.3,56,396/- to the writ petitioner, who is the mother of the said deceased. In the said award, it was directed that the compensation awarded shall be deposited within thirty days from the date of the receipt of the copy of the award and that on failure to so deposit, the writ petitioner would be entitled to interest @ 9% per annum from the date of the institution of the WC case. Having received the copy of the award, the 3rd respondent had deposited the compensation on 05.02.2010, that is, not within the stipulated time. Therefore, the petitioner has become entitled to claim interest. The petitioner had filed an application in I.A.no.4 of 2011 under Section 4A of the Act for recovery of the interest amount in a sum of Rs.1,08,687/- from the 3rd respondent/insurance company. In that application, the 1st respondent had passed orders directing to deposit interest in a sum of Rs.81,525/- within thirty days from the date of the receipt of the copy of the said order. The copy of the said order was communicated to the 1st respondent. However, the 3rd respondent (insurer) did not either deposit the amount before the 1st respondent or pay the same to the writ petitioner. The 3rd respondent also did not give any reply to the communication sent by the writ petitioner. Hence, the present writ petition is filed.

3. No counter is filed by the 3rd respondent.

4. At the hearing, the learned counsel for the writ petitioner and the learned Standing Counsel for the 3rd respondent-insurance company have fairly submitted that the 3rd respondent-insurance company had already deposited Rs.65,220/- towards the interest amount due and payable after deducting Rs.16,305/- towards tax deductible at source. Therefore, the short question that falls for consideration in this writ petition is as to whether the writ petitioner is entitled to request the Court to direct the 3rd respondent to deposit the balance interest amount of Rs.16,305/-, which was said to have been deducted towards income tax deductible at source.

5. The learned counsel for the writ petitioner would submit that the interest amount on the compensation is not the amount due towards interest for one year and that the said total amount of interest on the compensation amount is the interest due from the date of the claim application till the date of the deposit and that therefore, the interest amount relates to several assessment years and that if the total interest that is payable by the insurance company is spread over on annual basis, no income tax would be payable and deductible. Therefore, he had contended that the action of the 3rd respondent in deducting income tax in lump sum without spreading over interest amount on annual basis is incorrect and that in the circumstances, the insurance company is liable to pay the balance interest amount also to the writ petitioner.

6. On the other hand, the learned counsel for the 3rd respondent would submit that the income tax at source is deductible from the amount of interest payable as the interest amount payable to the sole claimant has exceeded Rs.50,000/- and that as per the settled legal position, the lump sum interest amount that had accrued upto the date of the payment or deposit has to be taken into consideration for the purpose of TDS and that such lump sum interest arrived at need not be spread over on annual basis even though the interest accrued relates to more than one year and that the procedure adopted by the insurance company is correct, in the facts and circumstance of the case.

7. However, the learned counsel for the 3rd respondent could not submit any proof as to whether the insurance company after deducting the tax at source on the interest had deposited the said amount to the credit of the income tax department's account within the stipulated period and whether it had also filed quarterly return or such return as prescribed and applicable to the case and whether a certificate either in Form no.16A or such other form as prescribed and applicable to the case was furnished to the claimant to enable the claimant/writ petitioner to either avail the benefit of the tax deducted at source or to claim refund of the tax, as the case may be. Further, it is not the case of the writ petitioner that she had furnished a declaration on Form no.15-G of rule 29-C of the Income Tax Rules in terms of Section 197-A (1-A) of the Income Tax Act or such other declaration as may be applicable to her case for each financial year relieving the insurance company of its obligation to deduct tax at source.

8. In the light of the facts and the submissions, it is necessary to sum-up the legal position.

In the decision in **The National Insurance Company Ltd. V. Yeliminti Appanna and another**[1], this Court had dealt with a similar question in a motor vehicle accident compensation case and had formulated the guidelines dealing with the aspect of determination of the correctness or otherwise of the TDS. In the cited decision, the guidelines formulated and the ratio laid down, are as follows:

> " **To sum up**, **the Tribunals have to take note of the following guidelines while dealing with the aspect of determination of correctness or otherwise of the TDS (Tax Deducted at Source) in cases of Motor Accident Compensation claims.**
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> **(1) The person or insurance company paying or depositing the compensation is not obligated to deduct any income tax at source on the actual compensation amount awarded.**
>
> **(2) Such person or insurance company is obligated to deduct tax at source from the amount of interest only, if only, the amount of interest payable to each claimant exceeds Rs.50,000/-. However, such lump sum interest amount that had accrued up to the date of payment or deposit can be taken into consideration in case of each such claimant for purpose of TDS and such lump sum interest arrived at in case of each claimant need not be spread over on annual basis even in cases where the interest accrued and payable relates to a period of more than one year.**
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> **(3) In a case where the claimant is an income tax assessee and is having a PAN and furnishes the required details, then, in case of such a claimant, the percentage of deduction of tax at source shall be at the rate of 10%. But, where such claimant is not having a PAN and also fails to furnish the required form, in case of such claimant, the deduction of tax at source shall be at the rate of 20%. Thus, in cases where the Decree Holder/claimant concerned fails to submit the PAN or the required form to the Insurance Company or the payer, as the case may be, then the TDS shall be at the rate of 20%, at present.**
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> **Be it noted that in case a claimant furnishes a declaration, on Form No. 15 G of R. 29C of the IT Rules in terms of Section 197(1A) of the IT Act or such other declaration on such Form as may be applicable, for each financial year, either to the**

person concerned or in the office of insurance company, in such a case the person/the insurance company is relieved of his/its obligation of payment of TDS. It is appropriate to mention that the TDS deducted on interest shall be deposited within the statutory period and the Person/the insurance company shall also file either the quarterly return or such return as prescribed and applicable to the case and shall furnish to the claimant a certificate either on Form No. 16A or on such form as may be prescribed and applicable to the case to enable the claimant to either avail the benefit of the tax deducted at source or to claim refund of the tax as the case may be.”

9. Coming to the facts of the instant case, the contentions of the 3rd respondent-insurance company that the tax is deductible on the lump sum interest amount that had accrued upto the date of payment or deposit and that such lump sum interest payable to the claimant need not be spread over on annual basis even in cases the interest that has accrued relates to more than one year, are valid being in accord with the law laid down by this Court. However, the insurance company could not produce any evidence to show that the TDS deducted on interest is deposited within the statutory period and that it had filed either quarterly return or such other return as prescribed and applicable to the case on hand. It is not the case of the insurance company that it had furnished to the writ petitioner/claimant a certificate either in Form no.16A or such form as applicable to the case of the writ petitioner to enable her to claim refund of tax, in case, she is entitled to do so. However, this Court need not go into those aspects as it is always open to the petitioner to proceed against the insurance company for failure on its part in discharging any of its statutory obligations.

10. Viewed thus, this Court deems it appropriate to dispose of the writ petition with the following observations/directions:-

(i) The insurance company cannot be faulted for deducting Rs.16,305/- towards TDS payable on the interest amount.

(ii) In case, the insurance company had deposited the amount and had filed a quarterly return or such return as prescribed and applicable to the case and had furnished a certificate to the writ petitioner/claimant, the claimant shall avail either the benefit of the tax deducted at source or claim the refund of the tax as the case may be, as per law, if she so desires and so advised. However, if no such procedure is followed by the insurance company, it is open to the petitioner, if she so chooses, to proceed legally against the insurance company for the loss, if any, sustained by her on account of the insurance company not following the statutory procedure after having deducted the income tax at source.

11. The Writ Petition is disposed of accordingly. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition shall stand dismissed.

M.SEETHARAMA MURTI, J

09th February 2016
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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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[1] LAWS (APH)-2014 (4) 168 = MANU/AP/0513/2014