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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29th January, 2016

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CM(M) 973/2014 & CM No.17960/2014

THE ORIENTAL INSURANCE CO LTD

..... Petitioner

Through Mr. Pradeep Gaur with Mr. Amit
Gaur, Advs.

versus

NIRMAL CHAUDHARY & ANR

..... Respondents

Through Mr. O P Mannie, Adv. for R-1 to

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company has filed this petition feeling aggrieved with the order dated 30.08.2014 in execution case No.77/2010 arising out of MACT case registered as suit No.118/2000, passed by the Motor Accident Claims Tribunal (West) ("the tribunal") directing it to deposit certain further amounts to satisfy the award.

2. The background facts have been noted by the Tribunal in the impugned order in the following words :

"The award in the suit No.118/2010 was passed by Ld. Predecessor Sh. Sukhdev Singh, on 11.02.2004 vide which the insurance company was directed to pay the petitioners a sum of Rs.26,65,000/- along with interest @9% per annum. An interim award of Rs.50,000/- was also passed by the then Ld. P.O. MACT vide order dtd. 03.05.2001 and the same was released to the claimants before passing of final award.

The insurer/J.D. preferred an MAC Appeal No. 276/2004 against the final award dt.11.02.2004. During the pendency of appeal. Hon'ble High Court of Delhi vide its order dated 12.04.2005 ordered that 50% of the amount deposited by the insurer be released to the claimants against adequate security.

Finally, the appeal was disposed off by the High Court vide its order dated 18.05.2010 and award amount was reduced to a sum of Rs.20,24,000/- along with the interest @ 9% per annum.

Admittedly, an amount of Rs.17,81,972/- was released to the claimants on the directions of the Hon'ble High court of Delhi. Thereafter, a payment of Rs.8,31,988/- was also released to the claimants on 04.07.2011 by the insurance company."

3. The issue raised before the Tribunal against the other backdrop was that the insurance company was liable to pay further interest for the period after depositing the awarded amount till actual payment had been received by the claimants, referring in this context to the condition that the release of the amount was to be granted only upon furnishing of a bank guarantee for which purposes the claimants took some time to comply.

4. The claimants referred to the view taken by this Court in *State of Haryana v. K Vimala Raghavachari and Ors.* 1991 ACJ 255, which, in turn, had referred to *P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramanathan Chettiar* AIR 1968 SC 1047. It may be added here that in support of the view eventually taken by the Tribunal in the impugned order, the claimants further place reliance on *V. Kala Bharathi and Ors. v. Oriental Insurance Co. Ltd.* 2014 ACJ 1612 (SC), *New India Assurance Co. Ltd. v. Kashmiri Lal and Ors.* 2007 ACJ 688 (Delhi) and *United India Insurance Co. v. Kanwar Lal & Ors.* IV (2014) ACC 35

(Del.).

5. The Tribunal concluded that in view of the aforementioned rulings, the claimants were entitled to interest on the claim for the period in dispute, upholding the contention that they had not been able to secure the amount because they had not been able to arrange the bank guarantee within reasonable time.

6. Having heard both sides, this Court finds the view taken by the Tribunal cannot be upheld. In this context, the observations of a bench of three Hon'ble Judges of the Supreme Court in *V. Kala Bharathi* (supra), in paragraphs 28 to 31, only need to be quoted. The same read as under :

“28. In the judgment referred to by the High Court in the impugned judgment, this Court and the Privy Council consistently have taken a view that in case of appropriation of amount unless the decree contains a specific provision, the amounts have to be appropriated as contemplated under Order 21 Rule 1. If there is a shortfall in deposit, the amount has to be adjusted towards interest and costs, then it has to be adjusted towards principal. The High Court has failed to appreciate this fact and misdirected itself in observing that these judgments are prior to the amendment to Order 21 Rule 1. In our considered view, as far as this aspect is considered, there is no much difference in the provisions prior to or subsequent to the amendment, because in the objects and reasons for amendment to Order XXI Rule 1, as observed by the Constitution bench in Gurpreet Singh the legislative intent in enacting sub-rules (4) and (5) is that interest should cease on the deposit being made and notice given or on the amount being tendered outside the court in the manner provided. The intent of the rule making authority is to leave no room for any frivolous pleas of payment of money due under a money decree.

29. We may add that the High Court proceeded on the

assumption as if sub-rules (4) and (5) of Rule 1, which were inserted pursuant to Amendment to C.P.C. in 1976, there is change in procedural law and the tenor of sub-rule (1) thereof. But, sub-rules (4) and (5) do not have any relevance with regard to appropriation, except stating when interest ceases to run. Thus, it is no way guide for appropriation of amount as contemplated under Order XXI Rule 1 of the CPC. In Industrial Credit Development Syndicate (supra) which is subsequent to the amendment to the provision, this Court has categorically observed the procedure to be followed and which squarely applies to the case, but the High Court has given its own interpretation to the judgment and failed to consider the law laid down by this Court in its proper perspective.

30. *The next finding of the High Court is with regard to interest on interest.*

In money suit, the amount consists of principal and interest till the suit is filed. But, in case of award passed under the Act, the question of inclusion of any interest on the decretal amount does not arise. Unfortunately, the High Court proceeded on the assumption that it amounts to interest on interest which is prohibited under Section 3(3)(c) of Interest Act, 1978 (for short, 'the Interest Act'). This is not so, as in the facts and circumstances of the present case, the decree passed by the trial Court or - the appellate Court does not contain the mode of appropriation and in the absence of any such direction, the decree-holder is entitled to appropriate the amount deposited by the judgment debtor first towards interest, then cost and thereafter towards principal.

31. *In view of above and more particularly keeping in view the ratio of the Constitution Bench judgment in Gurpreet Singh (supra), where considering an identical question in respect of Order XXI Rule 1 of the CPC, it was held that if the amount deposited by the judgment debtor falls short of the decretal amount, the decree-holder is entitled to apply the rule of appropriation by appropriating the amount first towards interest, then towards costs and subsequently towards principal amount due under the*

decree; we are of the opinion that the appellants herein are entitled to the amount awarded by the Executing Court, as the amounts deposited by the judgment debtor fell short of the decretal amount. After such appropriation, the decree-holder is entitled to interest only to the extent of unpaid - principal amount. Hence, interest be calculated on the unpaid principal amount.”

7. The above observations of the Supreme Court answer the questions raised effectively demonstrating that the claimants cannot claim interest over interest.

8. Thus, the impugned order is set aside. The learned Tribunal is directed to re-compute the liability of the insurance company and enforce if any further payment requires to be made and, thereafter, record satisfaction.

**R.K. GAUBA
(JUDGE)**

**JANUARY 29, 2016
VLD**