IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 838 OF 2017

VARSHA KAILAS PAWAR
VERSUS
SHRIRANG VITHALRAO DAK AND ORS
...
Advocate for Appellant : Mr. Chaudhari Nitin K
Advocate for Respondent No.3 : Mr. S.S. Wagh h/f Mr. A.S. Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 28th JUNE, 2017

PER COURT:-

1. With consent of respective counsel heard finally at admission stage.

2. Being aggrieved by the judgment and award dated 3.11.2015 passed by the learned Member, M.A.C.T. Aurangabad in M.A.C.P. No. 761 of 2011, the appellant-original claimant has preferred this appeal to the extent of conditional order of grant of interest by the Tribunal vide clause 2 of operative part of the order.

3. Learned counsel for the appellant submits that Section 171 of the Motor Vehicles Act 1988 empowers the tribunal to grant interest from the date of presentation of claim and not from the date of accident. Thus, once discretion has been exercised by the Tribunal to award interest on the amount of compensation to be awarded at a

particular rate and from a particular date, there is no scope for putting any condition. No express or implied power in this regard can be carved out in view of the provisions of Section 171 of the said Act. Such direction in the award vide clause 2 of operative part of the order virtually amounts to imposing of penalty which is not statutorily envisaged and prescribed. Learned counsel submits that in the instant case, the tribunal though has exercised the discretion in favour of the appellant/claimant, as to grant of interest on the amount of compensation awarded, further directed that the respondent Nos. 1 to 3 to pay compensation within 45 days form the date of the order, failing which they shall to pay interest @ 9% p.a. from the date of filing of the petition till realization of the amount. Learned counsel submits that such condition cannot be imposed in terms of provisions of section 171 of the M.V. Act and the Tribunal ought to have awarded interest from the date of application till realization of entire amount.

4. Learned counsel for the appellant in order to substantiate his contentions, placed reliance on the following judgments:-

i) Abati Bezbaruah vs. Dy. Director General, Geological Survey of India and Anr, reported in AIR 2003 SC 1817;

ii) National Insurance Co. Ltd. vs. Keshav Bahadur and Ors., reported in AIR 2004 SC 1581;

iii) Dnyandeo Karbhari Nagare vs. Gitaram Shankar Wakchaure and Ors, reported in 2004 (4) ALL MR 710;

iv) Dr. Inder Sain Chawla vs Janak Ram Aka Kuldeep Kumar, reported in 2006 (2) TAC 309;

v) Manju Rani Das vs. Oriental Insurance Co. Ltd., reported in 2014 ACJ 2248 and

vi) Rana Ahmad vs. Mangal Alias Mangal Chand, reported in 2006 (2) ACJ 335.

5. Learned counsel for the respondent insurer submits that award of interest as provided under Section 171 of the M.V. Act is discretionary power and the same is to be exercised in case where the claimants can claim the same as a matter of right. Learned counsel submits that the discretion has to be used judiciously and not arbitrarily. Learned counsel submits that even though expression “may” is used in section 171 of the M.V. Act, the duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The purpose for award of interest is to put pressure on the relevant person not to delay in making the payment; and, to compensate the victim or his

dependents at least to some extent for such delay as may occur, by way of interest. Learned counsel submits that in the instant case by putting the condition while granting interest, the tribunal has followed true spirit of provision of Section 171 of the M.V. Act 1988. There is no substance in the appeal and thus the appeal is liable to be dismissed.

6. Learned counsel for the respondent-insurer in order to substantiate his contentions, placed reliance on the following judgments:-

I) Puttamma vs. K.L. Narayana Reddy and another, reported in AIR 2014 SC 706 and

ii) National Insurance Co. Ltd. vs. Keshav Bahadur and others, reported in AIR 2004 SC 1581.

7. Section 171 of the Motor Vehicles Act 1988 is reproduced herein below:-

> ***"171. Award of interest where any claim is allowed.-*** *Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be*

paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

8. Even though the expression "may" is used, duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The provision is discretionary and cannot be governed by the Rules.

9. In the case of ***National Insurance Company Ltd. vs. Keshav (supra)*** relied upon by learned counsel for the respondent, in para 8 of the judgment, the Supreme court has made the following observations:-

"8. The inevitable conclusion on the factual backgrounds is that the liability of the insurer-appellant is limited to Rs.50,000/-. The residual question is whether there could be any stipulation of penal rate of interest as done by the Tribunal and affirmed by the High Court. So far as the higher rate of interest stipulation is concerned, it is to be noted that grant of interest under Section 110CC of the Act (corresponding to Section 171 of the Motor Vehicles Act, 1988) (in short the 'new Act') is discretionary. The purpose for award of interest is to put pressure on the relevant person not to delay in making the payment; and, to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of interest. In determining the quantum of interest awardable under the relevant Section, the Tribunal acting under Section 110 of the Act corresponding to Section 166 of the new Act can derive direct guidance from Section 34 of the Code of Civil Procedure, 1908 (in short the 'CPC'). In fact, the provisions require payment of

interest in addition to compensation already determined. Even though the expression 'may' is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The provision is discretionary and is not and cannot be bound by rules. In the words of Lord Cairns, L.C. in Julius v. Bishop of Oxford (1880 (5) AC 214), "But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so". This classic observation has been quoted with approval by this Court in several cases. (See Commissioner of Police v. Gordhandas Bhanji (AIR 1952 SC 16 and S.P. Gupta and Ors. v. President of India and Ors. (AIR 1982 SC 149). In Halsbury's Laws of England, 4th Edn., Vol.I, it has been observed:-

Para 28: Duty and discretion.
xxx xxx xxx

"A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be a discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but a discretion how to act. Discretion may thus be coupled with duties".

10. In the case of ***Dnyandeo vs. Sitaram, (supra)*** relied upon by

the learned counsel for the appellant, this court, by referring the judgment in the above mentioned case of ***National Insurance Company vs. Keshav Bahadur*** (supra) held that the claimants are entitled for interest on the amount of compensation awarded from the date of presentation till deposit.

11. In the case of ***Dr. Inder Sain Chawla vs. Janak Ram Aka Kuldeep Kumar (supra)*** relied upon by learned counsel for the appellant, the Punjab and Haryana High Court, in para 6 of the judgment, in identical situation, has made the following observations:

> *"6. However, I find force in the contention raised by the learned counsel for the appellant that the Tribunal erred in granting conditional interest at the rate of 12 per cent on the amount of compensation. The accrual of interest on the amount of compensation in the eventuality of its non-payment for two months from the date of the award seems to be quite illogic. I am of the view that the interest on the total amount of compensation ought to have been granted from the date of claim petition and not after two months of the date of the award of the Tribunal in the eventuality of its non-payment by respondent Nos. 1 to 3. Resultantly, I partly allow the appeal by modifying the award dated 11.8.2000 passed by the Tribunal to the extent that the appellant shall be entitled to the grant of interest at the rate of 12 per cent per annum on the total amount of compensation, which shall accrue to the appellant from the date of filing of the claim petition till realization."*

12. In the case of ***Manju Rani Das vs. Oriental Insurance Co.***

Ltd., (supra) relied upon by learned counsel for the appellant, the High Court of Calcutta in para 18 of the judgment has made the following observations:-

> *"18. As to interest, we are of the opinion that the claims tribunal has gone totally wrong. In view of the provisions of s.171 of the Motor Vehicles Act, 1988 it was under an obligation to grant the appellants (found entitled to compensation) interest on the determined amount of compensation from March 15, 2006, when the application for compensation was filed, till the date of payment."*

13. In the case of ***Rana Ahmad vs. Mangal @ Mangal Chand (supra)*** relied upon by learned counsel for the appellant, the High Court of Rajasthan in para 6 of the judgment in identical facts, made the following observations:-

> *"6. So far as the appeal bearing No. 765/93 filed on behalf of Smt. Sayar Kanwar, arising out of MACT Case No. 52/92 is concerned, I find that the learned Tribunal considered that no documentary evidence was produced in respect of monthly income of the deceased, which was stated to be Rs. 1200 per month. The employer was also not examined in the matter. This is a case relating to the year 1987. The Tribunal assessed the monthly income of the deceased as Rs. 900 and after deducting 1/3rd amount assessed the dependency amount as Rs. 600 per month and looking to the age of deceased applied the multiplier of 30 and awarded compensation for loss of estate as Rs. 2,16,000. The amount under other heads were also allowed. The total*

compensation of Rs. 2,56,000 was awarded. After considering the reasoning of the Tribunal, I do not find any illegality or perversity in the finding recorded by the Tribunal and looking to the age and income of the deceased, the amount of compensation of Rs. 2,56,000 awarded in the present case, appears to be just and reasonable and no interference is called for in this regard.

So far as the interest on amount of compensation is concerned, I find that as and when the amount of compensation is awarded normally the Tribunal allows the interest on it, but in the present case, the Tribunal passed a conditional order, about the interest to the effect that in case the amount of compensation is not paid within a period of two months, it shall carry interest at the rate of 12% per annum. I find that in the interest of justice, the amount of compensation should have carried interest without any condition. Therefore, I allow both the appeals in part and it is directed that the appellants of both the appeals will be entitled to get interest on the amount of compensation awarded by Tribunal at the rate of 9% per annum from the date of filing of the claim application till the date of payment/deposit of the amount thereof. The award of the Tribunal to that extent is modified."

14. Even in the case of ***National Insurance company vs. Keshav Bahadur (supra)*** relied upon by learned counsel for the respondent-insurer, the supreme court in para 8 of the judgment has observed that the Tribunal requires to pay compensation in addition the compensation already determined. Even though the expression "may" is used duty is laid on the Tribunal to consider the claim of interest separately with due regard to the facts and circumstances of the case.

15. In the instant case, the learned Member of the Tribunal, has exercised the discretion for grant of interest. However, further direction to the respondents to pay the interest on the amount of compensation, in the eventuality of its non-payment within 45 days from the date of the award, seems to be quite illogical. The said condition is against the provisions of Section 171 of the M.V. Act. No such conditional order can be passed while awarding the interest, once the Tribunal has decided to exercise the discretion in favour of the appellants/claimants.

16. In view of the above discussion, the impugned judgment and award requires modification to that extent. Hence, I proceed to pass the following order:-

O R D E R

I. The appeal is hereby partly allowed. No costs.

II. The impugned judgment and award dated 3.11.2015 passed by the Member, M.A.C.T. Aurangabad in M.A.C.P. No. 761 of 2011, to the extent of clause 2 of operative part of the order in respect of grant of interest, is modified in the following manner:-

"The respondent Nos. 1 and 3 are jointly and severally directed to pay total compensation of Rs.43,02,721/- (Rupees Forty three lacs two thousand seven hundred twenty one only) to the petitioners, from the date of filing of petition i.e. 20.9.2011 till realization of entire amount."

III. Rest of the judgment and award passed by the Tribunal stands confirmed.

IV. The award be drawn up as per the above modification.

V. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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