

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

22 FIRST APPEAL NO. 1005 OF 2004

Aadhar Dayaram Patil

Age : 35 years, Occu : Skilled Labour,
R/o Nagaon, Tq. & Dist. Nandurbar

.. Appellant
(Orig. Claimant)

VERSUS

1. Yusuf Beg Rashid Beg
Adult, Occu : ST Driver,
R/o. Shirpur Bus Depot,
Tq. Shirpur, Dist. Dhule.
2. Owner of ST Bus No. MH-20/D-3427
Divisional Controller, Maharashtra
State Road Transport Corporation
Dhule Division, Dhule.
3. Kedarmal Jakhettiya,
Adult, Occu : Dumper Truck Owner,
R/o M/s Ketu Constructions,
31/6 Sneh Nagar, Indore (M.P.)
4. Insurer of the Dumper Truck,
United India Insurance Co. Ltd.,
Branch Manager, Dhule

.. Respondents

...

WITH

FIRST APPEAL NO.1006 OF 2004

1. Smt. Vasantabai Hansa @ Thansing Bhil,
Age : 30 years, Occu : Household,
2. Miss. Savita Hansa @ Thansing Bhil
Age : 4 ½ years (Minor)
Through her guardian, petitioner No.1
Both R/o Nagaon, Tal. Nandurbar
District : Nandurbar

.. Appellants
(Orig. Claimants)

VERSUS

1. Yunus Beg Rashid Beg,
Adult, Occu : Bus Driver,
R/o Shirpur S.T. Bus Depot,
Tal. Shirpur, Dist. Dhule
 2. Owner of ST Bus No.MH-20/D-3427
Divisional Controller, Maharashtra
State Road Transport Corporation
Dhule Division, Dhule.
 3. Kedarmal Jakhettiya,
Adult, Occupation : Dumper Truck Owner,
R/o M/s Ketu Constructions,
31/6 Sneha Nagar, Indore (M.P.)
 4. Insurer of the Dumper Truck
United India Insurance Co. Ltd.,
Branch Manager, Dhule.
- .. **Respondents.**

WITH**FIRST APPEAL NO.1007 OF 2004**

Vansabai Ananda Pawar (Bhil)
Age : 45 years, Occu : Household,
R/o. Nagaon, Tq. & Dist. Nandurbar.

.. Appellant
(Orig. Claimant)

VERSUS

1. Yusuf Beg Rashid Beg
Age : Adult, Occu : S.T. Driver,
R/o. Shirpur S.T. Bus Depot,
Tq.Shirpur, Dist. Dhule.
2. The Divisional Controller,
Maharashtra State Road Transport Corporation,
Dhule Division, Dhule.
(Owner of S.T. Bus No. MH-20-D-3427)
3. Kedarmal Jakhetiya
Age : Adult, Occu : Dumper Owner,
R/o. M/s. Ketu Constructions,

31/6, Sneh Nagar, Indore (M.P.)

4. United India Insurance Co. Ltd.,
Branch Manager, Dhule Branch,
Dhule (Insurer of Dumper truck). .. Respondents.

WITH

FIRST APPEAL NO.1008 OF 2004

Kacharu Chintaman Bhil,
Age : 30 years, Occu : Skilled Labour,
R/o Shirpur S.T.Bus Depot,
Tal. Shirpur, Dist. Dhule

.. Appellant
(Orig. Claimant)

VERSUS

1. Yusuf Beg Rashid Beg,
Adult, Occu: S.T. Driver,
R/o. Shirpur Bus Depot,
Tq. Shirpur, Dist. Dhule.
2. Owner of S.T. Bus No.MH-20/D-3427
Divisional Controller, Maharashtra
State Road Transport Corporation
Dhule Division, Dhule.
3. Kedarmal Jakhettiya, Adult,
Occupation : Dumper Truck Owner,
R/o. M/s Ketu Constructions,
31/6 Sneh Nagar, Indore (M.P.)
4. Insurer of the Dumper Truck,
United India Insurance Co. Ltd.,
Branch Manager, Dhule .. Respondents

WITH

FIRST APPEAL NO.1009 OF 2004

1. Smt. Vandanabai @ Bebibai Tukaram Patil,
Age : 26 years, Occupation : Household work

2. Miss. Sapna Tukaram Patil
Age : Minor, Occu : Nil,
Petitioner No.2 being minor
Through her Guardian Petitioner No.1.
Both Resident of Nagaon,
Tal. & Dist. Nandurbar.

..Appellants
(Orig. Claimant)

VERSUS

1. Yusuf Beg Rashid Beg,
Age : Adult, Occu : S.T. Depot,
R/o. Shirpur, S.T. Bus Depot,
Tq. Shirpur, Dist. Dhule.
2. The Divisional Controller,
Maharashtra State Road Transport Corporation,
Dhule Division, Dhule.
(Owner of S.T. Bus No. MH-20-D-3427)
3. Kedarmal Jakhetiya,
Age : Adult, Occu. : Dumper Truck Owner,
R/o. M/s Ketu Construction,
31/6 Sneha Nagar, Indore (M.P.)
4. The United India Insurance Co. Ltd.,
Branch Manager, Dhule Branch,
Dhule.
5. Dayaram Budha Patil,
Age : Adult, Occu : Agriculturist
6. Sau. Laxmibai Dayaram Patil
Age : Adult, Occu : Household work
Nos.6 & 7 Resident of Nagaon
Tal. & Dist. Nandurbar.

.. Respondents

WITH

FIRST APPEAL NO.1010 OF 2004

Shantilal Ziparu Pardeshi
Age : 36 years, Occu : Police Constable
and Agriculturist, Resident of Nandurbar,
Tal. & Dist. Nandurbar

.. Appellants
(Orig. Claimant)

VERSUS

Divisional Controller,
Maharashtra State Road Transport Corporation,
Dhule Division, Dhule.

.. Respondent.

WITH**FIRST APPEAL NO.1011 OF 2004**

Devidas Chindha Bhil,
Age : 35 years, Occupation : Skilled Labour,
R/o. Nagaon, Tal. & Dist. Nandurbar

.. Appellant
(Orig. Claimant)

VERSUS

1. Yusuf Beg Rashid Beg,
Age : Adult, Occu : S.T. Driver,
R/o. Shirpur S.T. Bus Depot,
Tq. Shirpur, Dist. Dhule.
2. The Divisional Controller,
Maharashtra State Road Transport Corporation,
Dhule Division, Dule.
(Owner of S.T. Bus No. MH-20-D-3427)
3. Kedarmal Jakhetiya,
Age : Adult, Occu : Dumper Owner,
R/o. M/s Ketu Constructions,
31/6, Sneha Nagar, Indore (M.P.)
4. United India Insurance Co. Ltd.,
Branch Manager, Dhule Branch,
Dhule (Insurer of Dumper truck)

.. Respondents

.....

In all matters

Advocate for Appellant : Shri N.B. Suryawanshi
Advocate for Respondents No.1 & 2 : Shri P.K. Joshi
Advocate for Respondent No.2 : Shri D.S. Bagul
Advocate for Respondent No.4 : Shri A.B. Gatne

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CORAM : P.R. BORA, J.
Dated: August 03, 2017

PER COURT :-

. Heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondents.

2. In all these matters, the Motor Accident Claims Tribunal, Dhule, (hereinafter referred to as the 'Tribunal') has awarded the interest on the amount of compensation conditional from the date of award if the amount is not paid within one month from the date of award. In the present appeals, the challenge is restricted only to the aforesaid part of order pertaining to the award of interest. According to the appellants, the Tribunal has erred in awarding the conditional interest. It is the contention of the appellants that, the Tribunal must have allowed the interest on the amount of compensation from the date of filing of the claim petition by the respective claimants till realization of the amount of compensation as awarded by the Tribunal.

3. The learned Counsel appearing for the Maharashtra State Road Transport Corporation and for United India Insurance Co. Ltd., submitted that, under Section 171 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), it is the discretion of the

Tribunal whether to award interest in addition to the amount of compensation and if yes, at what rate and from which date. The learned Counsel submitted that, once the Tribunal has exercised the said discretion based on the facts and circumstances of the case, no interference is warranted in the order so passed by the Tribunal.

4. The only issue which falls for my consideration in these appeals is, 'whether the Tribunal has erred in not awarding the interest from the date of filing of the claim petition.'

5. Before advertng to the arguments advanced by the learned Counsel appearing for the parties, I deem it appropriate to reproduce herein below Section 171 of the Motor Vehicles Act, 1988, which provides for award of interest, where the claim is allowed.

***“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.”*

6. At the outset, it has to be stated that, the learned Counsel

appearing for the parties in the present appeals were *ad idem* on the usual practice being followed by the Claims Tribunal of awarding the interest on the amount of compensation from the date of filing of the claim petition till realization of the said amount. It is, however, expected that, the Tribunal shall exercise the said discretion in fair, reasonable and judicious manner.

7. I have carefully perused the Judgments and Awards impugned in the present appeals. The learned Tribunal has nowhere discussed as to why it was deviating from the usual and settled practice of awarding interest from the date of filing of the claim petition and why for it has awarded the conditional interest from the date of award, if the amount is not paid within one month from the date of award.

8. Similar issue was raised before the Himachal Pradesh High Court in the case of **Rajesh Kumar Vs. Sudhir Rana and another 2009 ACJ 735** 'whether the Tribunal erred in not awarding the interest from the date of filing of the claim petition.' The learned Single Judge of the Himachal Pradesh High Court answered the said issue in the affirmative. Interpreting Section 171 of the Motor Vehicles Act, 1988 the learned Judge observed thus :

*“No doubt, in the aforesaid Section the word may has been used. However, it is more than apparent that an obligation is cast upon the Claims Tribunal to consider the question of payment of interest. There is no reason why a party which has not unduly delayed the proceedings should be denied interest. The cause of action arises when the accident takes place and normally a party is entitled to interest from the date of filing of the application. In case the interest is not to be granted from the said date or the interest is to be refused the Claims Tribunal must give reasons for the same. In the present case, I find that the proceedings had not been delayed by the claimant and, therefore, I hold that he is entitled to interest. It would be pertinent to mention that this Court in *Shushank v. Ram Karan*, 2006 ACJ 779 (HP), has already taken this view.”*

9. Similar such issue was before the another learned Single Judge of the Himachal Pradesh High Court in case of **Raj Kumar and another Vs. Kashmir Singh and others** 2009 ACJ 745. In the said matter, the petitioners were held entitled to a sum of Rs.75,000/- towards compensation and the said amount was directed to be deposited by respondents with the Tribunal within one month from the date of passing of the award failing which the respondents were made liable to pay interest at the rate of 9% per annum till the date of realization. In the aforesaid context, it was argued before the High Court that, the Tribunal has erred in law by not awarding interest from the date of filing of the petition. The High Court held that, the Tribunal must have awarded interest from the date of filing

of the application. While allowing the appeal, following observations were made by the High Court.

“It is evident that the grant of interest on the awarded amount has been provided under section 171 of the Motor Vehicles Act, 1988, though the word 'may' and not 'shall' has been used in section 171 of the Motor Vehicles Act, 1988, still the Tribunal while exercising its jurisdiction, may award interest on the amount of compensation. In fact, the Claims Tribunal awards interest from the date of filing of the petition and if the interest is not awarded, the Tribunal has to assign specific reasons for not awarding the same. In the present case, it is clear from the operative portion of the award that no reasons have been recorded for not awarding interest.”

10. In case of **Laxman Tikamdas Sippy Vs. Omprakash Tulsidas Wadhwa 2009 ACJ 819 Bombay** also a similar issue was raised. In the said matter alike in the present case the Tribunal had allowed the interest from the date of award, if it is not complied with within one month. The said Tribunal had not assigned any reason for not awarding the interest from the date of filing of the claim application. There was no finding that, the claimants delayed the proceeding. The question for consideration before the High Court was, 'whether the claimants are entitled to the interest from the date of filing of the claim application' and the High Court held the applicants entitled to the interest @ 9% per annum from the date of filing of the claim application till realization.

11. In the case of **Ayush Kumar Bilala V. Himmat Singh 2007 ACJ 462 Rajasthan**, the Rajasthan High Court was required to deal with the similar issue. In the said matter, the Tribunal had not awarded any interest and no reasons were recorded by the Tribunal for not awarding the interest. The Rajasthan High Court held that, the Tribunal was not justified in not allowing the interest without recording any reasons and consequently allowed the interest at the rate of 9% per annum from the date of filing of the claim petition till payment.

12. In case of **Sarvat Kochak V. National Insurance Co. Ltd., 2006 ACJ 2101 Jammu & Kashmir**, the Jammu & Kashmir High Court held that,

“interest takes care of the period between date of claim and date of payment. If the tribunal finds that, claimant is not entitled to the interest, it must record its reasons, failure to give reasons shows that, the tribunal has failed to exercise jurisdiction vested in it properly.”

13. In **Shashikant Vs. Shantabai 2009 ACJ 463 Bombay**, the Tribunal had awarded the interest from the date of award and had not given any reason for not awarding the interest from the date of

application. The issue for determination before the High Court was, whether the Tribunal erred in not awarding the interest from the date of claim application. The High court held that,

“Section 171 of Motor Vehicles Act, 1988, does not mandate awarding interest from the date of application as the word used in Section 171 is 'may' which means judicial discretion is left to the Tribunal; Tribunal should use its discretion judiciously and award interest from the date of application unless there are circumstances suggesting protraction on the part of claimants.”

14. In the matter of **New India Assurance Company Ltd Vs. Parvin Mohamed Gaus and Other** 2005 ACJ 1956 Bombay, the learned Single Judge of this Court has held that,

“The interest is ordinarily awarded by a Court or Tribunal not by way of penalty, but under section 34 of the C.P.C. Or principles analogous thereto to neutralise the diminution in the value of money caused by passage of time, which often is on account of inability of the Courts to deliver instant or quick justice.”

15. Having regard to the issue raised in the present appeals, I may usefully refer and rely upon the Judgment of the Hon'ble Apex Court delivered way back in the year 1990 in **Ramesh Chandra v.**

Randhir Singh, 1990 ACJ 777 (SC). In the said matter neither the claimant had claimed any interest in his claim petition nor it was awarded by the Tribunal. The Apex Court was considering the question, 'whether interest could be awarded even when the same has not been claimed.' While answering the question in the affirmative, the Hon'ble Supreme Court held that, addition of interest to the compensation, by judicial discretion, is sequential in the yes of law and no claim in that regard specifically need to be laid in the claim petition. The Apex Court further held that, the amount of interest is not dependent on any pleading in that regard and can even be orally asked if the contingency arises. Interest was granted at the rate of 6 per cent per annum by the Hon'ble Apex Court from the date of application till realization.

16. 'What is the reasonable interest payable on the amount of compensation awarded to claimant in a motor accident claim case' was the issue involved before the Full Bench of the Andhra Pradesh High Court in the matter of **Andhra Pradesh State Road Trans. Corpn. and another Vs. B. Vijaya and others 2002 ACJ 1846.** The observations made in para 38 to 41 of the said Judgment are relevant in context of the issue raised in the present appeals. I deem it appropriate to reproduce the same herein below, which are thus :

38. *“The term 'interest' is neither defined in the Code nor in the Interest Act, 1978. According to West's Legal Thesaurus, 'interest' may mean 'a charge that is paid to borrow for use of money'. In the Concise Oxford Dictionary, the term has been defined as 'money paid for the use of money lent'. According to Chaber's Twentieth Century Dictionary, the word 'interest' literally means 'premium paid for the use of money'. In Black's Law Dictionary, the expression 'interest' has been defined thus:*

“Interest is the compensation allowed by law or fixed by the parties for the use of forbearance or detention of money.”

39. *Therefore, it is a charge made for the use of money given by one person and taken by another. When a person claims a certain amount to be due from another and he is found entitled to it, he may be awarded a further sum called 'interest' depending on the circumstances of each case and the law or custom or usage having the force of law. Interest is the amount payable by the borrower to the lender for forbearance or detention of the amount lent to him. The rate of interest may either be by agreement or by operation of statutory provisions where it specifically provides for such payment.*

40. *There is difference between the amount borrowed for specific purpose and the amount to be granted in a motor accident claim case. The amount in the former case is on account of contractual obligation whereas in the latter case it is a variable one and not based on any agreement but has occasioned on account of the death of or injury caused to any person resulting from an accident arising out of the use of a motor vehicle or motor vehicles due to negligence.*

41. *The natural conception of the word 'interest' is the ordinary or normal profit, which the person*

entitled to the principal money, might have made had he used the said money, or his expected loss under usual or ordinary circumstances due to the non-payment of the same at the proper time.”

17. In view of the law settled as above by judicial pronouncements, I have no hesitation in holding that, the Tribunal while passing the Judgments and Awards impugned in the present appeals has erred in not awarding the interest from the date of filing of the claim petition. As noted herein above, in none of the Judgments, the Tribunal has assigned any reason for not awarding the interest from the date of filing of the claim petition. It is not the case that, the hearing of the claim petitions was prolonged at the instance of the claimants therein. Further, it does not appear that any inordinate delay had occurred in adjudication of the claim petitions. In the circumstances, there was no reason for the Tribunal to deprive the claimants from the legitimate benefit of interest on the amount of compensation as envisaged under Section 171 of the Act. The Tribunal has, thus, failed in properly exercising the discretion vested in it. All these appeals therefore deserve to be allowed. Hence, the following order.

ORDER

1. The appellants in the present appeals i.e. the claimants in the respective claim petitions, are held entitled to the interest at the

rate of 9% per annum on the amount of compensation awarded to them in the respective claim petitions from the date of filing of the claim petition till the date on which the principle amount of compensation was realised. Awards be modified accordingly. The appeals stand allowed in the aforesaid terms.

(P.R. BORA, J.)

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