

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No.616 of 2006**

The Oriental Insurance Company Ltd. Through its Divisional Manager, Jail Road, Raipur, Distt. Raipur (CG)

---- Appellant

Versus

1. Smt. Kiran Bai, wife of Nagorao Surose, aged about 50 years,
2. Anand Rao Surese, Son of __, aged about 26 years,
- 3.

Both are resident of H M T Chowk, Handi Para, Raipur (CG)

4. Santosh Tiwari, Son of Bhagawati Prasad Tiwari, resident of Meel Para, Dipra, Durg, Distt. Durg (CG)
5. Mehbood Khan, Son of Ameen Khan, resident of Rehmaniya Chowk, Raipur (CG)

---- Respondents

For Appellant	:	Mr.Sudhir Agrawal, Advocate
For Res.No.1 and 2	:	Mr.Amiyakant Tiwari, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

9/1/2018

1. Learned counsel for the appellant would submit that penal interest awarded by learned Claims Tribunal at the rate of 8% in default of making payment within two months is unsustainable and bad in law. He would rely upon the judgment of the Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Keshav Bahadur and others**¹.
2. On the other hand, learned counsel for the claimants would oppose the appeal.
3. I have heard learned counsel for the parties.
4. The Supreme Court in the matter of **Keshav Bahadur** (supra) has held as under:-

¹ (2004) 2 SCC 370

“13. Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.”

5. Thus, in the light of provisions contained in Section 171 of the Motor Vehicles Act, 1988 and following the principle of law laid-down by the Supreme Court in above-stated judgment (supra), it is quite vivid that imposition of penal interest on the compensation is neither statutory envisaged nor prescribed, therefore, penal interest is not payable.
6. In the light of that, the award of penal interest is hereby set aside. Other terms and conditions of the award shall remain intact.
7. The appeal is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-