IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 760 OF 2018

United India Insurance Company Ltd. .... Petitioner
Versus
Kamlabai Ashok Dhume (D), Thr. LRs.
& 2 Others .... Respondents

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Mr. Suraj R. Naik, Advocate for the Petitioner.

Mr. Milton Marshall, Advocate for the Respondent Nos. 1(A) to 1(D).

CORAM : C.V. BHADANG, J.

DATE : 14th February, 2019

ORAL ORDER:

By this petition, the petitioner is challenging the order dated 23.11.2017, passed by the Executing Court in Execution Case No. 34/2016.

2. The respondent nos. 1(A) to 1(D) had filed the said execution case for execution of the award passed by the Motor Accident Claims Tribunal (Tribunal, for short), in which, the said respondents had filed computation of the amount, which was payable as on 25.10.2017. As per the said calculation, the amount due on 25.10.2017 was Rs.1,09,544.50. The Executing Court has passed the following order on the said computation.

> *"Since calculation is not disputed by JDs, though opportunity given, therefore, calculation is accepted. Judgment debtors to pay the said amount immediately."*

Feeling aggrieved, the petitioner is before this Court.

3. It is contended by Mr. Naik, the learned Counsel for the petitioner that the tax has been deduced at source only on the amount of interest and not the compensation, which has been awarded by the Tribunal. It is submitted that if, the interest on such compensation, in any particular financial year exceeds Rs.50,000/-, then the tax has to be deducted at source as per Section 194-A of the Income Tax Act. It is submitted that the petitioner had filed a reply and its own computation of the amount payable, which has not been considered by the Executing Court. It is submitted that in the absence of the production of a Pan card, the TDS has to be deducted at 20% and accordingly, the petitioner has deducted Rs.94,779/- on the total interest of Rs.4,73,835.40, which has been credited to the Income Tax Department. It is submitted that thus, the Trial Court was in error in directing the petitioner to pay the amount as claimed by the respondent nos. 1(A) to 1(D) on 25.10.2017.

4. Mr. Marshall, the learned Counsel for the respondent nos. 1(A) to 1(D) has supported the impugned order. It is submitted that the petitioner has not followed the guidelines, as laid down by the Division Bench of this Court in the case of **Mrs. Gauri Deepak Patel & Others Vs. New India Assurance Co. Ltd. & Another 2010(2) ALL MR 176**. It is submitted that even otherwise, the interest payable to each of the claimants, in a particular financial year, would not exceed Rs.50,000/- and as such, the petitioner was not justified in deducting the tax at source from the amount of interest. It is submitted that no reply was filed and the Executing Court had noted that the computation, as furnished by the respondents was not disputed. It is submitted that the computation now produced in this petition does not show as to on which date, the said computation was made or produced before the Executing Court.

5. I have carefully considered the rival circumstances and the submissions made. A Division Bench of this Court in the case of **Mrs. Gauri Deepak Patel** (supra) has laid down the procedure, which is to be followed by the parties before the Motor Accident Claims Tribunal, which is as under:

> *(i) The Insurance Companies or the owners of the motor vehicles depositing the amounts in*

compliance with the awards of the Motor Accident Claim Tribunals shall:

(a) First spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit.

(b) Thereafter, if the interest for any particular financial year exceeds Rs.50,000/-, separately deposit before the Tribunal the amount liable to be deducted at source under the provisions of Section 194-A(3) to (ix) of the Income Tax Act, 1961. Such amount shall not, however, straightaway, be paid over to the Income-tax department.

(c) Produce before the Claims Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of claim application till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/- and also request the Tribunal to treat the amount as a separate deposit.

(ii) The Tribunal shall ensure that the amount of interest accrued each year is apportioned amongst the claimants on year to year basis.

(iii) If the interest payable to any claimant during any particular financial year exceeds Rs.50,000/-, the Tribunal shall permit the Insurance Companies/owners to pay over the amount liable to be deducted at source under Section 194-A(3)(ix) to the Income Tax Department in respect of that particular claimant for the particular year, without prejudice to the claimant's case that he is not liable to pay any income tax for that year.

(iv) For the financial year(s) for which the interest payable to the concerned claimant does not exceed Rs.50,000/-, the Tribunal may permit such claimant to withdraw the amount deposited as per direction (i)(b) without producing the

certificate from the concerned income tax authority that there is no income tax liability on the interest which has accrued on the compensation awarded by the Tribunal.

(v) It is clarified that the amount other than the amount liable to be deducted at source under Section 194-A(3)(ix) shall be invested/disbursed by the Tribunal.

(vi) When the claimants make applications before the authority under the Income Tax Act, 1961 for the refund of the amount deducted under the provisions of Section 194-A(3)(ix) of the Act, the concerned authority shall decide such applications with utmost expedition.

It can thus be seen that as per clause (i)(b) above, the petitioner was required to deposit the amount liable to be deducted at source, under the provisions of Section 194-A of the Income Tax Act separately, before the Tribunal, which is not done. The petitioner was also expected to produce the computation of the interest payable, by spreading the amount or the arrears from the date of the petition till the date of deposit and to show that the interest payable to each of the claimants, during any particular financial year was exceeding Rs.50,000/-. The petitioner has not shown whether, after spreading the amount of interest over the relevant financial years, the amount payable to each of the claimants (in the present case there are four claimants) was exceeding

Rs.50,000/- This is because as per clause (iv) above, if the interest payable to the "concerned claimant" was not exceeding Rs.50,000/-, the Tribunal was obliged to permit withdrawal of the amount deposited, without producing the certificate from the concerned Income Tax Authority.

6. In the present case, the Tribunal had granted a compensation of Rs.8,27,695/- alongwith interest at the rate of 9% p.a. from the date of the petition i.e from 22.03.2010 till actual payment alongwith costs. It is not known whether, the computation (at page 24) was produced before the Executing Court, as it does not bear any date. That apart, the Executing Court has noticed that the computation furnished by the contesting respondents was not disputed. Be that as it may, even going by the computation as furnished by the petitioner in this petition, the income payable, would be approximately Rs.74,000/- in every year and if apportioned between the four claimants, the amount would be less than Rs.50,000/- to each of the claimants. Looked from any angle, the petitioner was not justified in deducting the amount of tax at source from the income and directly depositing the same with the Income Tax department, which is in breach of the procedure, which has been laid down by the Division Bench of this Court in the case

of **Mrs. Gauri Deepak Patel** (supra).

7. In the result, no case for interference is made out in the impugned order. The petition is accordingly dismissed, with no order as to costs.

8. The amount deposited before this Court alongwith interest, if any, shall be transmitted to the Executing Court, which shall pass appropriate orders about disbursement of the same, in the light of the decision of this Court in the case of **Mrs. Gauri Deepak Patel** (supra).

C. V. BHADANG, J.

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