# IN THE HIGH COURT OF BOMBAY AT GOA

## WRIT PETITION NO. 349 OF 2019

Iffco Tokio General Insurance Company Ltd. .... Petitioner

Versus

Vetkesh Suresh Chalwadi @ Mulgund .... Respondent

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Mr. Clayton Anthony Fonseca, Advocate for the Petitioner.

**CORAM : C.V. BHADANG, J.**

**DATE : 4th April, 2019**

**ORAL ORDER**:

Heard the learned Counsel for the petitioner. Perused record.

2. The respondent has obtained an award of compensation of Rs.4,23,000/- alongwith interest at the rate of 9% per annum, from the date of filing of the claim petition till realisation, against the petitioner and others. The respondent filed Execution Application No. 2/2018, for execution of the said award, in which, the respondent-decree holder, filed a memo stating that the judgment debtor has deposited Rs.3,85,823/- on 05.12.2018 and after adjusting this amount, Rs.12,433/- is due and payable towards the principal amount alongwith interest from 06.12.2018, till realisation.

3. In reply, the petitioner claimed that an amount of Rs.14,963/- has been deducted towards tax at source. The question was whether, income tax could have been deducted from out of the amount of compensation.

4. The Executing Court by order dated 18.02.2019, placing reliance on the decision of the Madras High Court in the case of **Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd., Bharathipuram Dharmapuri Vs. Chinnadurai, AIR 2016 Madras 146** and the decision of the Himachal Pradesh High Court in **Court on its own motion Vs. The H.P. State Cooperative Bank Ltd. & Others, 2014 SCC Online HP 4273**, has held that the tax was not deductible, Thus, the Executing Court has directed the petitioner to pay an amount of Rs.12,433/- to the respondent alongwith interest at the rate of 9% per annum from 06.12.2018 till full and final payment. Hence, this petition.

5. A Division Bench of this Court in the case of **Gauri Deepak Patel & Others Vs. New India Assurance Co. Ltd. & Another, 2010(2) All.M.R. 176**, has laid down the following procedure to be followed in cases arising before the Motor Accident Claims Tribunal:

*(i) The insurance companies or the owners of the motor vehicles depositing the amounts in compliance with the awards of the Motor Accidents Claims Tribunal 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 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.*

6. It is evident that the said procedure was not followed by the petitioner-Insurance Company in this case. The

learned Counsel for the petitioner, in all fairness, did not dispute that even otherwise, the interest payable to the respondent-claimant, in any particular financial year would not exceed Rs.50,000/-. Thus, looked from any angle, the petitioner was not justified in deducting the tax at source. For this reason, no case for interference is made out. The petition is accordingly dismissed.

**C. V. BHADANG, J.**

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