IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 228 of 2013
Date of decision : 25.07.2019

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Subhash Aggarwal
...........Appellant

Versus

Life Insurance Corporation of India and others
..........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Namit Kumar, Advocate for the appellant.

Mr. Pawan Kumar Longia, Advocate for the respondents.

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RITU BAHRI, J.

The present regular second appeal has been filed by the appellant-Subhash Aggarwal against the judgment dated 12.4.2012 passed by the District Judge, Panchkula, whereby his appeal against the judgment and decree dated 2.2.2011 passed by the Civil Judge (Senior Division), Panchkula was dismissed. As per the trial Court judgment dated 2.2.2011, the suit of the appellant-plaintiff had been decreed in favour of the appellant-plaintiff to the effect that the repudiation of the claim pertaining to policy no.171218696 dated 30.9.1996 by the defendants vide letter dated 20.9.1998 was held to be null and void being arbitrary and illegal. The defendants were directed to release the payment of compensation/insured amount of ₹1,00,000/- to the appellant-plaintiff within a period of two months failing which the appellant-plaintiff was held entitled to the interest @ 12% per annum from the date of filing of the present suit till the actual realization of the amount.

After the trial court judgment, amount of ₹1,00,000/- had been paid to the appellant within a period of two months. The plaintiff filed the appeal before the lower appellate Court as the trial Court failed to order payment of interest from the date of repudiation of the claim till the amount was actually paid. It was pleaded that the appellant had been deprived of the policy amount and if the Court had come to the conclusion that the claim was wrongly denied, then the interest should have been allowed and the judgment required modification. The only point that was to be deliberated upon was whether the plaintiff was entitled to interest. After perusing the contract, the lower Appellate Court held that in the contract, there was no condition for payment of any interest amount. No notice was sent by the appellant-plaintiff. Moreover, no claim for pre-suit interest was raised by the plaintiff. While referring to the judgment in the case of ***Balwant Kaur vs. Life Insurance Corporation of India AIR 2005 Punjab and Haryana 140,*** it was observed by the lower appellate Court that interest prior to the institution of the suit can only be granted if there is agreement for payment of interest fixed at a rate or under provisions of any substantive law. With regard to payment of interest during the pendency of the suit it was held that it was the discretion of the Court to grant the interest. Moreover, since the trial Court had not granted any interest pendente lite and there was no contract for payment of interest, the appeal was dismissed.

Counsel for the appellant has referred to the judgment in ***Balwant Kaur's case (supra)***. In that case, the plaintiff was held entitled to the interest for the period the suit remained pending. The husband of the plaintiff-Balwant Kaur had taken a life insurance policy carrying double accident benefit for a sum of ₹ 65,000/-. He died on 26.10.1986 after suffering accidental fall from the stair case. The amount of the insurance policy was paid by the Insurance Corporation. However the benefit of double accident benefit was denied. The plaintiff filed a suit for recovery of ₹ 65,000 together with interest at the rate of 18% per annum w.e.f 26.10.1986. Learned trial Court decreed the suit along with interest at the rate of 12% per annum from 26.10.1986 and at the rate of 6% per annum from the date of institution of the suit till date of recovery and at the same rate thereafter till realisation. However, the lower appellate Court dismissed the appeal in respect of double accident benefit but set aside the decree to the extent of interest on the ground that in terms of the contract between the parties, the interest is not payable, therefore, the plaintiff was not held entitled to any interest. In regular second appeal before the High Court, the plaintiff was held entitled to interest for the period the suit remained pending before the Court as well as from the date of decree till realization. Since the learned trial Court has exercised discretion in granting interest at the rate of 6 per cent per annum for the pendente lite period as well as for the period after the grant of decree, such discretion was not interfered with.

Relevant paragraphs i.e 12, 13 and 17 are hereby being reproduced as under:

12. The Supreme Court concluded in one of the principles laid down in the aforesaid judgment to the following effect:-

"Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC dehors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."

In view of the judgments referred to above, it can be safely concluded that in terms of express prohibition of interest in terms of the policy, the plaintiff is not entitled to interest from the date of death of the policy holder till institution of the suit as pre-suit interest is a matter of substantive law. In substantive law, the plaintiff is not entitled to interest in terms of Section 3 (3)(ii) of the Interest Act, 1978. Thus, in respect of first *substantive question of law it is held that the plaintiff is not entitled to interest for the period prior to the filing of the suit.*

13. However, once the suit is filed, award of interest pendente lite and post-decree is discretionary with the Court and is governed by Section 34 of the Code de hors the contract between the parties. Therefore, the stipulation that no interest would be payable under the terms of the policy would cease to have effect after the filing of the suit and the plaintiff would be entitled to interest in terms of Section 34 of the Code.

17. In view of the above, the first substantial question of law is answered to the effect that the plaintiff is not entitled to interest for pre-suit period in view of the express stipulation in the policy. However, the plaintiff is entitled to interest for the period the suit remained pending before the Court as well as from the date of decree till realisation. Since the learned trial Court has exercised discretion in granting interest at the rate of 6 per cent per annum for the pendente lite period as well as for the period after the grant of decree, I do not find any reason to interfere with the said discretion exercised by the trial Court.

Counsel for the appellant-plaintiff has referred to a recent judgment of Hon'ble the Supreme Court of India in the case of ***Union of India vs. M/s Ambica Construction 2016(2) RCR (Civil) 638*** to contend that under Section 34 of Civil Procedure Code 1908 in the Arbitration proceedings, in case there is no express bar in the agreement for awarding pendente lite interest, Arbitrator has the power to award pendente lite interest on the basis of principle of Section 34 of the Code of Civil Procedure. In paragraph 10 , Hon'ble the Supreme Court observed as under:

> 10. A 3 Judges Bench of this Court in ***Hindustan Construction Co. Ltd. v. State of Jammu & Kashmir (1992) 4 SCC 217*** has laid down that the Arbitrator has the power to award pendente lite interest on the basis of principle of Section 34 of the Code of Civil Procedure though same is not applicable. However, the observation has to be considered in case there is no express bar in the agreement for awarding pendente lite interest as it has simply followed what has been laid down in G.C. Roy (supra). This Court has laid down thus:
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> "5. The question of interest can be easily disposed of as it is covered by recent decisions of this Court. It is sufficient to refer to the latest decision of a five Judge bench of this Court in ***Secretary, Irrigation Department, Govt. of Orissa & Ors. v. G.C. Roy.*** Though the said

decision deals with the power of the Arbitrator to award interest pendente lite, the principle of the decision makes it clear that the Arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an Arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of Code of Civil Procedure provides both for awarding of interest pendente lite as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the Arbitrator, though the section as such may not apply. In this connection, the decision in ***Union of India v. Bungo Steel Furniture (P) Ltd. AIR 1967 SC 1032*** may be seen as also the decision in ***Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) P. Ltd. 1989 1 532 SCC*** which upholds the said power though on a somewhat different reasoning. We, therefore, think that the award on Item No. 8 should have been upheld."

Above mentioned two judgments are applicable to the facts of the present case. In the light of these judgments, the judgment of the lower appellate Court is liable to be set aside. While buying the policy, there was no condition in the agreement between the appellant-plaintiff and the respondents-defendants to the effect that no interest will be paid in case of delayed payment. Hence in the absence of any such condition, the appellant has a right to be given interest during the pendency of the Civil suit.

In the light of all that has been discussed above, this regular second appeal is allowed. Judgment of the lower appellate Court dated 12.4.2012 is set aside. Direction is given to the Life Insurance Corporation of India to give payment of interest to the plaintiff @ 12% per annum from the date of filing of the suit by the appellant-plaintiff till the actual realization of the amount.

25.07.2019 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned Yes

Whether reportable Yes