IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1373 OF 2016

1. Sangita w/o Ravikumar @
Ravindrakumar Pawar
Age : 32 years, Occ ; Household,
R/o : Akashwani colony, Parbhani,
Tq. and Dist. Parbhani.

2. Kavita d/o Ravikumar @
Ravindrakumar Pawar
Age : 15 years, Occ : Education.

3. Prakash s/o Ravikumar @
Ravindrakumar Pawar
Age : 17 years, Occ ; Education.

Appellant Nos. 2 and 3 are minor
u/g of their natural mother -
appellant No. 1.

4. Devidasrao s/o Nagnathrao Pawar
Died [deleted].

5. Ratnaprabha wd/o Devidasrao Pawar
Age : 50 Yrs., Occ. Nil,
R/o : Akashwani colony, Parbhani,
Tq. and Dist. Parbhani.

6. Manoj s/o Devidasrao Pawar
Age : 30 Yrs., Occ. Nil,
R/o : Akashwani colony, Parbhani, ... **APPELLANTS/**
Tq. and Dist. Parbhani. **(ORI. CLAIMANTS)**

VERSUS

1. Allanur Sk. Hanif
Age : 50 Yrs., Occ. Business,
R/o : At post Bembli,
Tq. and Dist. Osmanabad.

2. The New India Assurance Co.
Ltd. Thr. its Branch Manager,
"Yashodhan" building,
Shivaji road, Parbhani,
Tq. and Dist. Parbhani. .... **RESPONDENTS**

...

Mr. P.N.Kalani, Advocate for the appellants.
Mr.M.B.Kolpe, Advocate for R - 1.
Mr. M.M.Ambhore, Advocate for R - 2.

...

CORAM : V.L.ACHLIYA, J.

JUDGMENT RESERVED ON : 21/01/2020
JUDGMENT PRONOUNCED ON : 24/07/2020

JUDGMENT :

1. **'Admit'.**

2. By consent of learned counsel representing the parties, the Appeal is heard finally at the stage of admission.

3. Being aggrieved by the Judgment and Order dated 10/09/2008 passed by learned Member, Motor Accident Claims Tribunal, Parbhani, the appellants/claimants have preferred this Appeal with a limited challenge of award of interest from the date of Award till its realization as against the claim of claimants to award interest from the date of filing of claim petition.

4. The facts relevant to decision in Appeal are as under.

[a] The claimants herein presented claim petition u/s 166

of Motor Vehicles Act on 12/07/2005 seeking compensation of Rs. 2 Lakhs on account of accidental death of deceased Ravikumar @ Ravindrakumar Devidasrao Pawar, who died in motor accident occured on 06/05/2005. The claimants have claimed that the deceased was 30 years old and serving with All India Radio Station at Parbhani. At the time of accidental death of deceased, the deceased was earning Rs. 6,600/- per month and serving in the employment of All India Radio Station as a driver. Before joining All India Radio Station at Parbhani, the deceased was serving with Deepak Garage and earning Rs. 100/- per day. Although the claimants have assessed the compensation to be payable as Rs. 14,51,000/- but restricted the claim in petition to Rs. 2 Lakhs.

[b] Respondent No. 2/Insurance company denied their liability to pay the compensation with contention that accident was occured due to sole negligence on the part of deceased and further pleaded that petition filed is bad in law for joining necessary party. The respondent No. 2 also disputed their liability to pay compensation with contention that there was breach of policy condition on the part of insured.

[c] In order to prove their case, the claimants have

examined claimant No. 1 i.e. wife of the deceased. No evidence adduced on the part of respondents.

[d] By the Judgment and Order dated 10/09/2008 passed by learned Member, Motor Accident Claims Tribunal, Parbhani allowed the claim petition and awarded compensation of Rs. 3,64,500/- [inclusive of NFL] with interest @ 6% per annum from the date of petition till realization.

[e] Being dis-satisfied with the quantum of compensation awarded by the Tribunal, the claimants have preferred Appeal. By the Judgment and Order dated 03/08/2012 passed in First Appeal No. 3125 of 2009 the Appellate Court set aside the Judgment and Order dated 10/09/2008 passed by Tribunal in M.A.C.P. No. 111/2005 and remanded the case to Tribunal for deciding the same afresh by giving an opportunity to both the parties to adduce additional evidence in addition to the evidence on record. While remanding case, the appellate Court observed that the amount already withdrawn by the claimants under the earlier Award would be retained by them and same shall be subject to further order to be passed by the Tribunal.

[f] After remand of the case, the claimants have examined

Shrishali Hiralal Jagdade working with All India Radio Station, Parbhani. He deposed that the deceased was employed with All India Radio Station at Parbhani as a driver and drawing monthly salary as Rs. 6,248/-. He has proved the salary slip, which is produced at Exh. 56.

[g] After the remand of the case, the Tribunal decided the claim petition afresh vide Judgment and Order dated 23/10/2013. By the Judgment and Award passed, the Tribunal has awarded the compensation of Rs. 10,22,208/- making the respondent liable to pay the same jointly and severally. The Tribunal has directed that after deducting the compensation amount of Rs. 3,64,500/- [awarded as per earlier Award] the claimants shall entitle to recover the balance amount of Rs. 6,57,700/- together with interest @ 6% per annum from the date of passing of Award till its realization. The claimants were directed to deposit the additional court fees to be payable over the enhanced amount of compensation within four weeks.

[h] Being aggrieved by the order to award the interest @ 6% per annum from the date of passing of Award the appellants have preferred this Appeal.

5. In brief, it is the contention of learned counsel for appellants that the Tribunal has erred in awarding the interest from the date of Award as against the claim of petitioner to award compensation from the date of petition. It is contended that no reasons have been recorded by the Tribunal to refuse to award interest from the date of claim petition. It is submitted that award of interest over the amount of compensation is a statutory obligation cast upon the Tribunal U/s 171 of Motor Vehicles Act. The award of interest from the date of filing claim petition is a rule and the award of interest from the date other than the date of petition is an exception. The Tribunal can make such exception to rule in general by providing special and adequate reasons to justify award of interest from the date other than date of application. It is further submitted that the award of interest over the amount of compensation being in the nature of compensation awarded towards forbearance or detention of money by the opposite party, as the claimants are entitled to receive the same for the period they are deprived to receive the just and fair compensation. Only for the reason the case was remanded by appellate Court in the year 2013 for fresh decision can not be accepted as a special or adequate reason to deviate from rule in general and award the interest from the date of passing of fresh Award. In support of the

submission made, learned counsel has referred and relied upon ***Judgment of this Court [CORAM : T.V.NALAWADE, J.] in the case of F.A. No. 1302 of 2014 dated 20/01/2016*** and decision of the Apex Court in the case of ***Subhalaxmi Vs. Managing Director, Tamil Nadu State Transport Corporation and another reported in 2013 (2) Mh.L.J. 20***.

6. On the other hand, learned counsel for respondent supported the Judgment and Award passed by Tribunal to award interest from the date of Award. It is pointed out that the interest @ 6% per annum over the amount of Rs. 3,64,500/- in terms of earlier Award dated 10/09/2008 already recovered, paid and withdrawn by the claimants. In the second round of litigation i.e. after the order of remand, the Tribunal has enhanced the compensation of Rs. 10,22,208/- on the basis of additional evidence adduced in the case by the claimants. The delay in decision of case solely attributable to the claimants. Due to their negligence to adduce proper evidence and examine the witnesses, to prove the employment and salaried income of deceased the case was remanded after eight years of filing of petition. In that view, the Tribunal was wholly justified in not saddling the liability of payment of interest over the enhanced amount of compensation from the date of claim application. For

the lapses on the part of claimants, the respondents can not be saddled with liability to pay interest from the date of claim application. It is further submitted that there is no hard and fast rule or any statutory provision casting obligation on the Tribunal to award interest from the date of application. It is submitted that the Tribunal has acted well within its authority to award interest from the date of award over the enhanced amount of compensation in the light of peculiar facts and circumstances of the case. It is submitted that the Tribunal has noted the checkered history of the case including order of remand and the additional evidence adduced by the claimants in the year 2013 as a reason to award interest over the enhanced compensation from the date of award. In this back-ground, learned counsel argued that the reasons recorded by the Tribunal can not be termed as perverse so as to call for interference in exercise of appellate jurisdiction by this Court.

7. I have carefully considered the rival submissions and perused the record and proceedings. The reasons recorded by the Tribunal to award interest from the date of passing of Award recorded in the Judgment and operative order reads as under.

> *" 16. Existence of the valid and effective Insurance Policy of the offending vehicle is established on record. As such, both the*

respondents are jointly and severally liable to pay to the petitioners the said compensation amount of Rs. 6,57,708/-. Issue No. 4 is, therefore, answered accordingly. The claim petition was filed in the year 2005. The petitioners preferred First Appeal against the Award passed by the Tribunal and the matter was remanded back for fresh adjudication. The evidence of P.W. 3 was adduced by the petitioners in the year 2013. In this view, I deem it proper to award interest to the petitioners on further compensation mount from the date of Award.

17. For the aforesaid reasons and discussion, the claim petition deserves to be allowed as indicated above. Hence, I pass the following order.

ORDER

(1) The petition is allowed with costs.

(2) Respondent Nos. 1 and 2 are jointly and severally held liable to pay to the petitioners the compensation amount of Rs. 10,22,208/- only [Rupees Ten Lacs Twenty Two Thousnand Two Hundred Eight only]. After deducting earlier compensation amount of Rs. 3,64,500/-, the petitioners are entitled to recover jointly and severally from the respondent Nos. 1 and 2 further compensation amount of Rs. 6,57,708/- only [Rupees Six Lacs Fifty Seven Thousand Seven Hundred Eight only] together with interest thereon at the rate of 6% per annum from the date of Award till its realization."

8. Thus, it is apparent from the reasons recorded by the Tribunal that the Tribunal has awarded interest from the date of Award only on the enhanced amount of compensation i.e. Rs. 6,57,708/-. The interest over the amount of Rs. 3,64,500/-

awarded in terms of earlier Award @ 6% per annum from the date of petition till its realization has not been disturbed or set aside by the Tribunal. While passing order in First Appeal No. 3125 of 2009 dated 23/10/2013 this Court has specifically observed that the amount which already received by the claimants in terms of Award passed by Tribunal to be retained by the claimants and same shall be subject to further order to be passed by the Tribunal, while deciding the matter afresh. In that case, there is no ambiguity in the Judgment and Award passed by the Tribunal.

9. It is apparent from the record that the claim petition which was filed on 12/07/2005 came to be decided on 10/09/2008. The compensation of Rs. 3,64,500/- with interest @ 6% per annum from the date of petition till its realization was awarded vide Judgment and Order dated 10/09/2008 passed by Tribunal. Although the appellants/claimants have claimed compensation of Rs. 2 Lakhs, the Tribunal has awarded compensation of Rs. 3,63,500/- i.e. over and above the amount claimed in the petition. Being dis-satisfied with the Judgment and Award dated 10/09/2008, the appellants/claimants had preferred First Appeal No. 3125 of 2009 before this Court. By the Order dated 03/08/2012, the Appeal was allowed and the

case remitted back to claim Tribunal for deciding the same afresh by giving opportunity to claimants to lead additional evidence as they had failed to adduce proper evidence. The amount awarded in terms of earlier Award allowed to be retained by the claimants. It is directed that the amount to be retained would be subject to further order to be passed by the Tribunal while deciding the matter afresh. After the remand of the case, the claimants have adduced additional evidence to prove the occupation and income of the deceased which they failed to adduce in earlier round of litigation. The evidence of witness on the point of occupation and income of deceased came to be recorded on 30/09/2013. After considering the additional evidence, the Tribunal has decided the case afresh vide Judgment and Order dated 23/10/2013. Thus, the delay in decision of the case completely attributable to the claimants. They failed to adduce proper evidence to support their claim. By taking sympathetic view, the appellate Court remanded the case to afford an opportunity to claimants to lead further evidence and prove the certificate of income of the deceased.

10. In the first round of litigation, the Tribunal has considered the income of the deceased as Rs. 3,000/- per month as the claimants have failed to prove that the deceased was

employed with All India Radio Station as well as to prove the monthly income of deceased as a salaried person. Although the claimants have claimed that deceased was working with All India Radio Station as a driver and receiving salary of Rs. 6,600/- per month, no evidence adduced in that behalf. In the cross examination, the witness for claimant has admitted that claimants have produced no evidence to show that deceased was receiving salary of Rs. 6,600/- per month. During the course of hearing before the appellate Court, the submission was advanced on the part of learned counsel for appellant that deceased was salaried person and sought the remand of case to prove the occupation and income of the deceased as a salaried person working i.e. as a driver with All India Radio at Parbhani. Taking sympathetic view that for the laches on the part of counsel representing the claimants, the claimants should not suffer, the case came to be remanded to the Tribunal for deciding the case afresh by giving opportunity to lead additional evidence. On remand of the case, the claimants have examined the witness and proved the Salary Certificate (Exh. 56) as that of deceased issued by his employer. By way of additional evidence it is proved that the gross earning of the deceased was Rs. 6,248/- per month and his take home salary was Rs. 4,665/-. On the basis of additional evidence, the Tribunal has decided the case afresh and enhanced the compensation from Rs. 3,64,500/- to Rs. 10,22,208/- vide Judgment and Award dated 23/10/2013 while maintaining the Award of interest @ 6% per annum from the date of petition till realization over the amount of Rs. 3,64,500/- awarded as per earlier Award, the Tribunal has awarded interest @ 6% per annum over the enhanced amount of compensation of 6,57,708/- from the date of Award till its realization. In that view, there is no perversity in the Judgment and Award passed by the Tribunal in awarding interest from the date of Award till its realization over the enhanced amount of compensation.

11. Section 171 of the Motor Vehicles Act provides for award of interest over the compensation awarded, and same reads as under.

> *" **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.**"*

Thus, the plain reading of section 171 of Motor Vehicles Act spell out that discretion vest with the Tribunal to award the interest at 'such rate' and from 'such date' over the compensation awarded. There is no statutory obligation cast upon the Tribunal to award the interest from the date of making application for compensation. The only restriction that has been cast upon Tribunal u/s 171 of Motor Vehicles Act is to ensure that interest to be awarded be a simple interest and same shall be payable not earlier than the date of making claim. Thus, except the embargo cast upon that interest can not be awarded from the date earlier to date of making claim, no other restrictions have been imposed upon the discretion of the Court/ Tribunal to award interest. The interest to be awarded necessarily simple interest to be payable at such rates as the Tribunal deem it fit and proper to be payable over the amount of compensation awarded.

12. In the case of ***Subhalaxmi Vs. Managing Director of Tamil Nadu State Road Transport Corporation*** [supra] cited by learned counsel for appellants, on due consideration of the facts and circumstances of the case, the order of payment of interest over the enhanced compensation from date of application till its realization has been passed. Section 171 of the Motor Vehicles Act has not been interpreted to hold that Tribunal has to award interest from the date of application irrespective of facts and circumstances of the case. In fact the

provision itself provides in clear unambiguous term that the interest to be awarded ***" at such rate and such date and not earlier than the date*** **of making the claim**".

13. In the case of ***Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and ors. reported in (2003) 3 SCC 148*** the Hon'ble Apex Court considered the purport of section 171 of Motor Vehicles Act. In para No. 18, the Apex Court has observed as under.

> *"18. Three decisions were cited before us by Mr. A.P.Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion.*
>
> *The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life, etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if claimant does not specifically plead for the same as it is consequential in the eye of law.*

> *Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept him out of the money which ought to have been paid to him. No principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to nature of provision under section 171 giving discretion to Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of enquiry. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there can not be any hard and fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above. "*

14. The payment of interest being awarded as a compensation for forbearance or detention of money to which a party is entitle and kept out by opposite party, no hard and fast rule can be laid down as to rate at which interest to be awarded and date from which such interest to be payable. While awarding interest, the Tribunal has to take into consideration the facts and circumstances of individual case. U/s 171 of Motor Vehicles Act neither the rate at which interest to be payable nor the date from which interest to be awarded has been provided.

Only restriction that has been put u/s 171 of Motor Vehicles Act over the exercise of powers of the Tribunal is not to award interest from the date earlier to filing of claim petition and interest to be awarded to be simple interest. In that view, the challenge raised in Appeal is devoid of merit. There is no illegality and perversity in the Judgment and order passed by the Tribunal to award interest over the enhanced amount of compensation from date of award on account of delay, laches and fault on the part of claimants to properly present and prosecute their case. There was failure on the part of claimants to adduce required evidence to prove occupation and income of deceased. It leads to remand of case to Tribunal for passing fresh Award. For the fault of appellants/claimants, the respondents could not held liable to pay interest over the enhanced amount of compensation from the date of petition.

15. Although the learned counsel for appellant argued that the order passed in the matter raises confusion and same can be interpreted in a sense that the interest @ 6% per annum has been awarded from date of Award over the entire amount of Rs. 10,22,208/-. In my view, there is absolutely no scope for making such interpretation. The order passed by Tribunal is clear and unambiguous. It is clearly mentioned in the order that the

interest @ 6% per annum to be payable from date of Award till realization over the enhanced amount of compensation of Rs. 6,57,708/-. The order of payment of interest @ 6% per annum over the amount of Rs. 3,64,500/- from the date of petition till realization in terms of earlier Award has not been disturbed and altered by the Tribunal while passing fresh Award and raising the compensation from Rs. 3,64,500/- to Rs. 10,22,208/-. In order to remove any doubt, it is clarified that in terms of Award passed by the Tribunal, the interest @ 6% per annum to be payable from date of petition till its realization over the amount of Rs. 3,64,500/- in terms of earlier Award passed in the matter. The interest @ 6% per annum from date of Award till its realization to be payable over the enhanced amount of compensation of Rs. 6,57,708/- awarded in terms of Award passed after the remand of the case.

16. In the result, the Appeal is dismissed with no order as to cost with the observations and clarifications recorded as above.

[V.L.ACHLIYA]
JUDGE

KNP