

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.496 OF 2021

Balkrishna S/o Babanrao Mhaske
Age:44 years, Occu.: at present NIL,
Through next friend Wife
Sau. Latabai W/o Balkrishna Mhaske,
Age: 36 Years, Occu.: Service & Household,
R/o Pimpalgaon,
Wagha Tq.: Nagar,
District: Ahmednagar **.. Petitioner**

Versus

1. The State of Maharashtra *(Deleted)*
2. The Income Tax Officer, *(Deleted)*
TDS Circle, Ahmednagar
3. The Senior Divisional Manager, *(Deleted)*
State Bank of India,
Main Branch Ahmednagar,
District: Ahmednagar
4. The National Insurance Company Ltd.,
Through Manager,
201, A-Wing Ambar Plaza,
Station Road, Ahmednagar,
Dist.: Ahmednagar

.. Respondents

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Advocate for Petitioner: Mrs. M. A. Kulkarni
Advocate for Respondent No.4:
Mr. P. G. Godhamgaonkar h/f. Mr. S. V. Kulkarni

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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	01.02.2023
Pronounced on:	08.02.2023

JUDGMENT:

1. The Petitioner is challenging deduction of the TDS on interest component of compensation awarded under the Motor Vehicles Act.

2. Heard Mrs. M. A. Kulkarni, learned counsel for the Petitioner and Mr. P. G. Godhamgaonkar holding for Mr. S. V. Kulkarni, learned counsel for Respondent No.4 / Insurance Company.

3. **Rule.** Rule made returnable forthwith. With consent of parties heard finally.

4. The brief facts can be summarized as under:-

. The Petitioner was serving in the Police Station as a Police Constable. He met with an accident at the age of 35 and sustained 100% disability. His claim before the Motor Accident Claims Tribunal, Ahmednagar was allowed and on an Appeal filed by the Petitioner, the same was enhanced. The High Court has enhanced compensation to Rs.22,51,375/- from 6,31,500/- hence total enhanced

payable amount is Rs.16,19,875/- with interest @9% from 01/08/2000 to 18/07/2018. Following chart produced by the Insurance Company indicated the payment made to the Petitioner:-

1)	Enhanced Principal	:	Rs.1619875/-
2)	Interest	:	Rs.2619005/- (Interest @9% from 01/08/2000 to 18/07/2018 on Rs.1619575/-)
3)	Cost	:	Rs.6614/-
3)	Total Payable	:	Rs.4238880/-
4)	Less TDS	:	Rs.523801/- (@20% on Interest Rs.2619005/-)
5)	Total Paid	:	Rs.3721693/- (Paid on 18/07/2018 vide cheque no.5796 before Ahmednagar Court.)

5. Mrs. M. A. Kulkarni, learned counsel for the Petitioner submits that the TDS deducted on the interest component of the claim amount is unlawful.

6. Mr. P. G. Godhamgaonkar holding for Mr. S. V. Kulkarni, learned counsel for Respondent No.4 / Insurance Company, submits that it is permissible to deduct TDS on the interest component, as the same is permitted under Section 194A of the Income Tax Act, 1961 and since no exemption is permitted from TDS, it is to be deducted.

7. This issue has been considered by the Division Bench of this Court in the case of Rupesh Rashmikanth Shah Vs. Union of India and others, Writ Petition No.2902 of 2016, dated 08.08.2019, the Division Bench has held at Paragraph Nos.56 and 57 as under:-

"56. The issue can be looked from a slightly different angle. In the context of interest, there are three crucial dates. The date of the accident is a date in reference to which the entire compensation is calculated. The date of filing of the claim petition is the date from which the claimant can seek interest on the compensation awarded by the Claims Tribunal. Under section 170 of the Motor Vehicles Act, the interest cannot be awarded for a period prior to filing of the Claim Petition. The date of passing of the award by Claims Tribunal is the date on which the compensation is determined and the right to receive interest pendente lite ceases. The interest for the period between the filing of the claim petition and passing of the award thus, is for the period when the claimant for the first time approached the Claims Tribunal asking the Tribunal to assess and award compensation and the time consumed in disposing of the Claim Petition. We may also recall, the interest can be awarded even though part of the compensation would comprise of future loss of income. This is so because, the multiplier method factors this aspect also. At the same time, as noted, the Courts do not award interest on future expenditure since the amount is being paid to the claimant for an expenditure which may be incurred at a

later point of time. This dichotomy, thus, between awarding interest on future income while not awarding interest for future expenditure brings out the true character of the interest being awarded.

57. We, therefore, hold that the interest awarded in the motor accident claim cases from the date of the Claim Petition till the passing of the award or in case of Appeal, till the judgment of the High Court in such Appeal, would not be exigible to tax, not being an income. This position would not change on account of clause(b) of section 145A of the Act as it stood at the relevant time amended by Finance Act, 2009 which provision now finds place in sub-section (1) of section 145B of the Act. Neither clause (b) of section 145A, as it stood at the relevant time, nor clause (viii) of sub-section (2) of section 56 of the Act make the interest chargeable to tax whether such interest is income of the recipient or not. Section 194A of the Act is only a provision for deduction of tax at source. Any provision for deduction of tax at source in the said section would not govern the taxability of the receipt. The question of deduction of tax at source would arise only if the payment is in the nature of income of the payee."

8. This Court has clearly held in the above two paragraphs that till the date of the Judgment of the High Court no TDS can be deducted on the interest component and, as such, the deduction

done by the Insurance Company on the interest component of the claim amount is bad in law.

9. The arguments canvassed by Mr. Godhamgaonkar, learned counsel for Respondent No.4 / Insurance Company is also considered by the Division Bench of this Court in the case of Rupesh Rashmikanth Shah (*supra*), at Paragraph Nos.58 and 59 and particularly Section 194A of the Income Tax Act, 1961 has been considered and, as such, his submission that the Judgments relied upon by the Petitioner of this Courts are *per incuriam* does not hold good. Section 194A of the Income Tax Act, 1961 is particularly considered in the case of Rupesh Rashmikanth Shah (*supra*), and held at Paragraph Nos.58 and 59 as under:-

58. We are not oblivious to erstwhile clause (ix) of sub-section (3) of section 194A or the newly amended clauses (ix) and (ixa) thereof substituting original clause (ix) w.e.f. 1.6.2015 by Finance Act, 2015. Subsection (1) of section 194A provides for deduction of tax at source upon payment of any income by way of interest. Sub-section (3) of section 194A contains exclusion clauses from the purview of sub-section (1). Clause (ix) contained in sub-section (3) prior to amendment pertained to income credited or

paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where such amount did not exceed Rs.50,000/-. In substitution of this provision, clause (ix) now provides that the provision of sub-section (1) will not apply to such income credited by way of interest on the compensation awarded by the Motor Accident Claims Tribunal. Clause (ixa) virtually retains the original provision of unamended clause (ix). The learned ASG would, therefore, contend that by virtue of these provisions, requirement of deducting tax at source on interest income would not arise only if the same does not exceed Rs.50,000/- in a financial year or where such income is merely credited. In other words, at the time of payment of interest, the provision for deduction of tax at source would kick in.

59. So far as the plain meaning of section 194A(1) read with erstwhile clause (ix) and substituted clauses (ix) and (ixa) of sub-section (3) is concerned, there can be no doubt or dispute. However, the fundamental question is does section 194A make the interest income chargeable to tax if it otherwise is not. The answer has to be in the negative. The provision for deduction of tax at source is not a charging provision. It only makes deduction of tax at source on payment of same, which, in the hands of payee, is income. If the payee has no liability to pay such income, the liability to deduct tax at source in the hands of payer cannot be fastened. In other words, the provision of deducting tax at source cannot govern the taxability of the amount which is being paid."

10. In view of the same, I pass the following order:-

ORDER

I] The Insurance Company is directed to pay the TDS amount deducted on the interest component of the claim amount, uptill the date of the High Court Judgment along with 9% interest.

II] Any interest on the claim amount after the date of the High Court Judgment, tax has to be collected as income from other sources and, as such, the Insurance Company would be entitled to claim TDS on that component of interest, which accrues after the High Court Judgment.

11. Rule is made absolute in above terms.

12. In view of the same, the petition stands allowed with the above directions.

[ARUN R. PEDNEKER, J.]