

Chaitali Ekke

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 723 OF 1998

Union Of India ...Appellant

Versus

M/S. Dineshchandra Mulji And Co. ...Respondent

....

Mr. Dheer Sampat i/b Mr.T.J. Pandian, Advocate for Appellant.

None for the Respondent.

....

CORAM : RAJESH S. PATIL, J.

DATED : 20th March 2023

P.C.:

1 This Appeal is filed under Section 23 (1) of Railway Claims Tribunal Act, 1987 by Appellant-Union of India challenging the judgment and order dated 16.01.1998 passed in case No. OC 9700292 of 1997.

2 Respondent had filed case before the Railway Claims Tribunal against the Union of India representing General Manager Central Railway for compensation of Rs. 4,000/- for damage cause to the consignment covered vide RR No. 568001 dated 12.08.1994 vide which 255 bags of wheat were booked Ex. Bhudhalada to Turbhe (TAPG), at Railway Risk rate. As the goods were damage by rain water, the Respondent herein filed the claim for compensation. The Railway

Claims Tribunal by its judgment and order dated 16.01.1998 allowed part claim to the Respondent (Original Applicant) of Rs. 2,524/- with proportionate cost and interest @ 12% per annum from the date of the claim application, i.e., 14.08.1997, till the date of payment.

3 The Advocate for the Appellant-Union of India states that his client had immediately after filing of the claim deposited a sum of Rs. 5,696.71 (on account of Rs. 4,000/- as the claim amount alongwith interest @ 24%).

4 The Railway Claims Tribunal after hearing both the sides and taking into consideration the evidence laid, and allowed the claim @ Rs. 2,524/- with 12% interest per annum.

5 The present Appeal challenges the said judgment and order dated 16.01.1998 passed by the Railway Claims Tribunal.

6 The Respondent have been served in this First Appeal. However, nobody appears on behalf of the Respondent neither any Vakalatnama has been filed on behalf of the Respondent though served. The Advocate for the claimants has restricted his argument only for the limited purpose of granting of interest by the Railway Claims Tribunal @ 12%. He submitted that in series of judgment, the Hon'ble Court has taken of a view that interest should be granted @ 6%. Taking into consideration Section 34 of Code of Civil Procedure. He relied upon

judgments viz. 1) *Union of India Vs. State Trading Corporation Ltd. and Anr.*¹, 2) *Maharashtra State Electricity Board Vs. Union of India*², 3) *Union of India Vs. J. Ramniklal and Company, Mumbai*³, 4) *Union of India Vs. Maharashtra State Electricity Board*⁴ and 5) *Union of India Vs. Maharashtra State Electricity Board*⁵.

7 The judgment in *State Trading Corporation Ltd.*, (Supra), in para No.24(i) read as under :

“(i) All appeals in which 9% interest has been awarded, namely, FA. Nos. 130/03, 132/03, 943/04, 1839/06, 670/05, 671/05, 672/05, 673/05, 674/05, 676/05, 677/05, 678/05, 679/05, 680/05, 1840/06, stand partly allowed. The rate of interest in all these appeals stand reduced to 6% p.a. to be paid from the date of filing of the claim applications. While allowing respondent No.1-Assurance Company to withdraw the amount of compensation that has already been deposited by the appellants, the difference, if any, due to reduction of the rate of interest, be deducted and it may be refunded to the appellants. Insofar as other appeals are concerned, the decrees against other Railways, that is, North East Frontier Railway, South East Railway and Eastern Railway, are set aside. The decrees against the Central Railway in all these appeals stand confirmed. All the appeals accordingly stand partly allowed in the aforesaid terms. The decrees in all these appeals be drawn up accordingly.”

In the case of *Maharashtra State Electricity Board* (Supra), in paragraph No.9 and 10 read as under :

1 2007(3) Mh.L.J. 609

2 2005(1) Mh.L.J. 165

3 First Appeal No. 721 of 1998, dated 18.11.2022

4 First Appeal No. 1607 of 1996, dated 10.11.2022

5 First Appeal No. 1009 of 1996, dated 10.10.2022

“9. On resume of the aforesaid authorities, it would be clear that the interest can be awarded in view of section 3(1)(b) of the Act as well as under section 34 of the Civil Procedure Code. This court is, therefore of the considered opinion that the contention of Mr. Lambat that the provisions of section 34 of the Civil Procedure Code have no application to the facts and circumstances of the present case in view of the provisions of section 28 of the Railway Claims Tribunal Act, 1987, is totally misconceived and liable to be rejected. The decision of this court in Diwan Rahu Nanda vs. Nitish G. Kotak, 1998(3) Mh.L.J.35, cited supra, is not of any assistance to him as the said decision is not applicable to the facts and circumstances of this case. Since there was compliance of section 3(1)(b) of the Interest Act it is obvious that the railway administration would be liable to pay interest in view of section 34 of the Civil Procedure Code.

10. This provision reads thus:

34. Interest.-(1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum), from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

(Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transaction.)”

(Supra), *Maharashtra State Electricity Board* (Supra), consider the judgments of *State Trading Corporation* (Supra) reported in 2007(3) Mh.L.J. 609 and 2005(1) Mh.L.J. 165, and agree with the view thereof.

9 I am of the view that the present matter is covered by the findings recorded in the above mentioned judgments and in view of section 34 of the CPC the interest should have been granted @ 6%.

10 As the Appellant have already deposited principal amount alongwith 24% interest as per the submissions made by the Advocate for the Appellant. The Respondent be allowed to withdraw the amount alongwith interest accrued thereon by calculating the principal amount @ Rs. 2,524/- with interest @ 6% from the date of claim application, i.e., 14.08.1997 till the date of deposit of the amount by the Appellant made before Railway Claims Tribunal and thereafter the accrued interest on the said amount 6% till withdrawal. The balance amount, if any, can be withdrawn by the Appellant-Union of India.

11 Accordingly, this appeal is partly allowed. First Appeal is disposed of accordingly.

(RAJESH S. PATIL, J.)