

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

FMA 1422 of 2015

Bimal Halder (Joyardder)

-Versus-

National Insurance Co.Ltd.

For the Appellant : **Mr. L.M. Ghosh.**

For the National Insurance : **Mr. Debnarayan Ray.**
Co. Ltd. / Respondent no.1

Delivered on : **12.12.2024**

Prasenjit Biswas, J:-

1. This appeal is directed against the judgment and award dated 17th April, 2014 passed by the XIIth Bench, City Civil Court, Kolkata in connection with MACC No. 172 of 2010.

2. By passing the impugned judgment and award learned Tribunal awarded Rs. 1,38,300/- in favour of the claimant and direction was given upon the respondent/Insurance Company to issue Account Payee Cheque in favour of

the claimant within two months of the date of the order failing which the entire compensation amount shall carry a simple interest @ 9% per annum from the date of the award till realization of the entire amount.

3. The Tribunal has awarded the interest on the amount of compensation conditional from the date of award, if the amount is not paid within two months from the date of award. In the present appeal the challenge is restricted only to the aforesaid part of the order pertaining to the award of interest. According to the appellant, the Tribunal has erred in awarding the conditional interest. It is the specific stand point of the appellant that the Tribunal must have allowed the interest on the amount of compensation from the date of filing of the claim petition by the claimant till realization of the amount of compensation as awarded by the Tribunal.

4. It is the further contention of Mr. L.M. Ghosh, the learned counsel for the appellant that the Tribunal has erred in awarding the conditional interest from the date of award as against the claim of the petitioner to award compensation and no reasons have been recorded by the Tribunal to refuse to award interest from the date of claim petition. It is further assailed by the learned advocate that the award of interest over the amount of compensation is a statutory obligation casts upon the Tribunal under Section 171 of the Motor Vehicles Act and the Tribunal must have awarded interest from the date of filing of claim petition. It is of rule to award interest from the date of filing of the petition and other than the date of filing of the petition is an exception.

5. Mr. Debnarayan Ray, learned Advocate for the respondent/Insurance Company submitted that the rate of interest should be 6% but it may be awarded from the date of filing of the petition. It is further said by the learned advocate for the Insurance Company that he has no objection if the interest at the rate of 6% is awarded in favour of the claimant from the date of filing of the petition.

6. The only issue which falls for my consideration in this appeal is whether the Tribunal has erred in not awarding the interest from the date filing of the claim petition.

7. I deem it appropriate to reproduce herein below Section 171 of the Motor Vehicles Act, 1988 which provides for award of interest where the claim is allowed. Section 171 of the Motor Vehicles Act stipulates as thus:

“171. 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.”

8. So, Section 171 of the Motor Vehicles Act empowers the Tribunal to 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 may be specified in this behalf. Interest is compensation

for forbearance or detention of money which ought to have been paid to the claimant. No rate of interest is fixed under Section 171 of the Act and the duty has been restored upon the Tribunal/Court to determine such rate of interest. Interest takes care of the period between date of claim and date of payment. Section 171 of the Motor Vehicles Act, 1988 does not mandate awarding interest from the date of application as the word used in Section 171 is 'may' which means judicial discretion is left to the Tribunal. Tribunal should use its discretion judiciously and award interest from the date of application unless there are circumstances suggesting protraction on the part of the claimants.

9. So far as the rate of interest at 9% on the total award is concerned, relevant reference is made to the decision in **Abati Bezbaruah -vs.- Dy. Director General, Geological Survey of India & Anr.**¹ wherein the Hon'ble Supreme Court held as extracted herein below:

"18. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant facts including inflation, change of economy, policy being adopted by 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

¹ (2003) 3 SCC 148

are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a 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 out of the money which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. 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....."

10. In following the observation of the Hon'ble Apex Court referred above that it is the duty of the Tribunal to add interest on the amount of compensation and it must be simple and shall also be paid at such rate as it thinks fit and proper. So, I see no reason to reduce the rate of interest from 9% to 6% per annum on the total amount of the award considering the facts and circumstances of this matter.

11. Having regard to the issue raised in the present appeal I may usefully refer and rely upon the judgment of the Hon'ble Apex Court delivered way back in the year 1990 in **Ramesh Chandra-vs- Randish Singh**². In the said matter neither the claimant claimed any interest in the claim petition nor it was awarded by the Tribunal, the matter was considered by the Hon'ble Apex Court that whether interest could be awarded even when the same has not been claimed. The Apex Court while answering the question in affirmative held that addition of interest to the compensation by judicial discretion is sequential in the eyes of law and no claim in that regard specifically needed to be laid in the claim petition. The Apex Court held that the amount of interest is not depended on any pleading in that regard and can even be orally asked if the contingency arises. Interest was granted by the Apex Court at the rate of 6% per annum from the date of application till realization.

12. At the outset it has to be stated that the learned Advocates appearing for the parties in the present appeal was ad idem on the usual practice being followed by the Tribunal of awarding interest on the amount of compensation from the date of filing of the claim petition till realization of the said amount. It is expected that Tribunal shall exercise the said discretion in fair, reasonable and judicious manner.

13. No doubt, Section 171 of the Motor Vehicles Act uses the word "may". However, it is more than that an obligation casts upon the Tribunal to consider

² **1990 ACJ (Supreme Court)**

the question of payment of interest. There is no reason why a party which has not unduly delayed the proceedings should be denied interest. The cause of action arises when the accident takes place and normally a party is entitled to interest from the date of filing of the application. In case if interest is not granted from the said date or the interest is to be refused, the Tribunal must give reasons for the same. In Section 171 though word “may” is used and “shall” has not been used still the Tribunal while exercising discretion may award interest on the amount of compensation. In fact, the Tribunal awards interest from the date of filing of the petition and if interest is not awarded from the date of filing of the petition the Tribunal has to assign specific reason for not awarding the same. In the present case, it is clear from the operative portion of the award that no reasons have been recorded for not awarding interest from the date of filing of the petition.

14. In view of the above discussion and also in view of the judicial pronouncement I have no hesitation in holding that, the Tribunal while passing the judgment and award impugned in the present appeal has erred in not awarding the interest from the date of filing of the claim petition. The Tribunal has not assigned any reason in not awarding the interest from the date of filing of the claim petition. It is not the case that the hearing of the claim petition was prolonged at the instance of the claimant/appellant. Further, it does not appear that any inordinate delay had occurred in adjudication of the claim petition due to the claimants. In the circumstances there was no reason for the Tribunal to deprive the claimant from the

legitimate benefit of interest on the amount of compensation as envisaged under Section 171 of the Motor Vehicles Act.

15. The Tribunal has, thus, failed in properly exercising the discretion vested in it. Accordingly, the present appeal deserves to be allowed.

16. Accordingly, the appellant in the present appeal i.e. the claimant in the claim petition is held entitled to the interest @ Rs. 9% p.a. on the amount of compensation awarded to him from the date of filing of the claim petition till the date on which the principal amount of compensation realized.

17. Awards be modified accordingly.

18. The appeal stand allowed in the aforesaid terms.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)