



2024: DHC: 2168



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 31st January, 2024**
Judgment pronounced on : 19th March, 2024

+ MAC. APP 70/2024, CM APPL. 5730/2024 (stay)

THE ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Abhishek Gola, Adv.

versus

SOHAN LAL & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 03.07.2023 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, South-East District, Saket Courts, New Delhi², in MACP No. 837/2018 titled 'Sohan Lal v. Samita Devi', whereby Rs. 79,62,056/- along-with interest @ 9% per annum was awarded in favour of the claimants, i.e., the kin of the deceased victim in the motor vehicle accident. The liability to pay the said compensation amount was fastened upon the insurance company, i.e., the appellant herein with liberty to recover the same from respondent No. 1 before the Tribunal and respondent No. 4 herein, i.e., the wife of the deceased driver and respondent No.2 before the Tribunal and

¹M.V. Act

²Tribunal



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respondent No. 5 herein, i.e., the daughter of the deceased owner of the bus. The appellant is seeking setting aside of the said judgment-cum-award on a limited ground as to the award of interest @ 9%.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the deceased Gopi Chander was of 32 years working as a Math Lecturer at Inter College, Kothila, when he met with a motor vehicle accident on 01.07.2018 when the bus he was travelling in bearing No. UK-12-PA-0159 fell down in the valley causing death of 48 passengers and grievous injuries to 13 passengers. The accident happened due to the bus being driven in a rash and negligent manner by the driver, who died along with the owner of the bus in this very accident. Suffice to state that the accident resulted in the death of Gopi Chander. Learned Tribunal *inter alia* held that the driver was driving the offending vehicle insured with the insurance company in a rash and negligent manner that resulted in the death of the relative of the claimants, which has not been assailed in the present appeal.

3. As pointed out above, the appellant assails the impugned judgment-cum-award insofar as quantum of interest awarded is concerned, which is claimed to be on the higher side. Learned Tribunal while deciding the issue No.2 as to the quantum of compensation referred to the proposition of law decided by the Supreme Court and deemed it fit that interest @ 9% should be awarded. However, the appellant is contesting the same and submits that in the given factual matrix, the rate of interest should have been fixed in between 6% to 7.5% p.a. instead of being fixed at 9% p.a.



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4. The appellant refers to a catena of cases decided by the Supreme Court and this Court to support its contention for reduction in the rate of interest, whereby the Courts reduced the rate of interest from 9% to 7.5%. In particular, reference was made to **Benson George vs. Reliance General Insurance Co. Ltd.**³, **Devi vs. National Insurance Co. Ltd.**⁴ and **R.K. Malik & Anr. vs. Kiran Pal & Ors.**⁵ Furthermore, the appellant urges that Section 171⁶ of the M.V. Act does not prescribe any fixed rate of interest and provides the Tribunal with a discretion to award interest while being mindful of economic factors such as inflation rate, the rate of interest as prescribed by the Reserve Bank of India at the time of the accident, amongst other things. Thus, the Tribunal has committed an error in awarding interest @9% when the maximum interest awarded could have been @7.5% in light of the relevant RBI guidelines on the subject.

ANALYSIS AND DECISION

5. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar and on perusal of the record of the present appeal, this Court finds that the interest awarded should be reduced to 7.5% instead of @ 9% awarded by the learned Tribunal.

³ (2022) SCC Online SC 238

⁴ (2019) 2 SCC 186

⁵ (2009) 14 SCC 1

⁶ **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.





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6. In the case of **National Insurance Co. Ltd. v. Yad Ram and Others**⁷, learned Single Judge of this Court had the occasion to examine the issue of grant of appropriate interest at the discretion of the Tribunal in motor accident claim cases. It was observed that Section 171 of the M.V. Act does not lay down any guidelines except that the interest on compensation should be at simple rate of interest and such rate may be specified by the Tribunal in this behalf, in addition to it being payable from such date not earlier than the date of making the claim. The learned Single Judge observed as under: -

“24. From a perusal of the aforesaid, it is evident that even though Section 171 gives a discretion to the learned Tribunal to grant interest on compensation, unlike Section 34 of the Code of Civil Procedure which prescribes that interest, except in commercial matters, would not exceed 6% p.a., neither any fixed rate of interest has been prescribed nor has any ceiling on the rate at which interest can be granted by the learned Tribunal under the MV Act has been provided. It is, therefore, always incumbent for the learned Tribunal to award interest at a rate which is deemed appropriate in the facts of each case; the rate must however be just and fair. The learned Tribunal has to keep in mind that interest is awarded not because of any contractual obligation but because of the delay in the claimants receiving the compensation which they should receive at the time of the accident itself. Since the time gap between the accident and the passing of an award may vary from case to case, Section 171 does not prescribe any fixed rate of interest and clothes the Tribunal with a discretion to award interest by taking into account factors like inflation, the rate of interest as prescribed by the Reserve Bank of India at the time of the accident as also the at the time of the passing of the award, the duration of the pendency of the claim petition, the nature of injuries, the nature of the urgency of the requirement of the claimants to receive compensation. The learned Tribunal may also take into account as to whether the claimants in order to meet the expenses for medical treatment of the injuries resulting from the accident were required to borrow from financial institutions. Another important factor would be as to what proportion of the awarded compensation

⁷2023 SCC OnLine Del 1849





pertains to damages already suffered such as medical charges, loss of earnings and out of pocket expenses *vis-à-vis* payments made towards loss of future earnings and loss of dependency, which in fact is being paid in advance. It cannot, therefore, be urged that because interest was granted at @12% p.a. by the Apex Court in respect of an award of a particular year, interest must necessarily be granted at the same rate in respect of all awards in the same year. Similarly, it cannot be said that because interest @ 6% p.a. was granted in an award pertaining to another year, the said rate must be followed in all awards of the same year. In every case, all surrounding circumstances have to be considered by the Court before awarding interest and in fact even a slight change in the circumstances of two claim petitions in respect of two contemporaneous accidents in itself may be a ground to award interest at different rates in the two cases.

25. This position that no fixed rate of interest on compensation under the Motor Vehicles Act has been repeatedly emphasised by the Apex Court. In this regard, reference may be made to the observations of the Apex Court in *Abati Bezbaruah v. Geological Survey* (supra) which reads as under:

“6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

* * * *

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 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 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. Therefore, in my opinion, there cannot 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.”

26. Reference may also be made to the decision of the Apex Court in *Dharampal v. UP State Road Transport Corporation*, (2008) 12 SCC 208, wherein it was emphasised that a duty has been laid on the tribunal to determine the question of interest by taking into account all the facts and circumstances of the case. In the said decision, the Apex Court, observed that the change in economy and policy of the RBI qua the rate of interest would be a relevant criteria for granting interest on compensation. The elucidative observations of the Supreme Court as contained in para 9 to 13 of the decision read as under:

“9. In National Insurance Co. Ltd. v. Keshav Bahadur [(2004) 2 SCC 370 : 2004 SCC (Cri) 558] this Court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression “may” is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is discretionary and is not and cannot be bound by rules.

*10. 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 bestowed upon the court to determine such rate of interest. In order to determine such rate we may refer to the observations made by this Court over the years. In the year 2001 in *Kaushnuma Begum v. New India Assurance Co. Ltd.* [(2001) 2 SCC 9 : 2001 SCC (Cri) 268], on the question of the rate of interest to be awarded it was held that earlier, 12% was found to be the*





reasonable rate of simple interest but with a change in economy and the policy of Reserve Bank of India the interest rate has been lowered and the nationalised banks are now granting interest @ 9% on fixed deposits for one year. Accordingly, interest @ 9% was awarded in the said case. We may at this stage also refer to the following observations of Their Lordships in the aforesaid decision which are relevant to the present case : (SCC p. 16, para 24)

“24. Now, we have to fix up the rate of interest. Section 171 of the MV 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’. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.”

11. In the year 2002, in United India Insurance Co. Ltd. v. Patricia Jean Mahajan [(2002) 6 SCC 281 : 2002 SCC (Cri) 1294] this Court held that the interest is payable on the equitable grounds to the aggrieved person who is deprived of using the money which is due and payable to him. Following the observations made in Kaushnuma Begum [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] interest @ 9% was awarded in this case also. It was held as follows: (Mahajan case [(2002) 6 SCC 281 : 2002 SCC (Cri) 1294], SCC p. 304, para 39)

“39. ... In our view the reason indicated in Kaushnuma Begum [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] is a valid reason and it may be noticed that the rate of interest is already on the decline. We therefore, reduce the rate of interest to 9% in place of 12% as awarded by the High Court.”

12. In the year 2003, in Abati Bezbaruah v. Geological Survey of India [(2003) 3 SCC 148 : 2003 SCC (Cri) 746] it was held that the question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time. After referring to the aforementioned decisions interest @ 9% was awarded in the said case.



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13. However, in the year 2005 in T.N. State Transport Corpn. Ltd. v. S. Rajapriya [(2005) 6 SCC 236 : 2005 SCC (Cri) 1436] this Court again taking note of the then prevailing rate of interest on bank deposits directed for lowering the rate of interest fixed by the Tribunal at 9% per annum and altered the same to 7.5% per annum.

14. In the backdrop of the aforesaid legal position, we may now examine the facts of the present case. The accident in the present case had taken place on 1-9-2004 and the Tribunal had passed the award on 18-5-2005. Rate at which the interest is to be awarded would normally depend upon the bank rate prevailing at the relevant time. Since in T.N. State Transport Corpn. Ltd. [(2005) 6 SCC 236 : 2005 SCC (Cri) 1436] decided in the month of April 2005, the prevailing rate of interest on bank deposits was found and held to be 7.5% per annum, we consider it appropriate to award the same rate of interest, as the same was the prevailing rate of interest on the date of the passing of the award i.e. 18-5-2005 in the present case. Consequently, we hold that the appellants would be entitled to be paid interest at the rate of 7.5% from the date of application till the date of payment.”

27. Learned counsel for the appellant has vehemently relied on the decision of the Karnataka High Court in *Managing Director Karnataka Power Corporation* (supra) to urge that interest on compensation under the Motor Vehicles Act is not by way of damages and therefore only nominal interest should be awarded by keeping in mind that this compensation comprises of two components, one being for the damage already done and the other by way of future earning or loss of dependency which is being paid in advance. In my considered view, while there can be no dispute with the fact that the compensation comprises not only of damages for losses already suffered by the claimants but also for loss which he/she may suffer in the future on account of the accident. However, this only implies that interest should be awarded by the Tribunal by taking into consideration all relevant factors. The decision in *Managing Director Karnataka Power Corporation* (supra), also emphasises this aspect. In this regard, reference may be made to observations of the Karnataka High Court in para 13 of its aforesaid decision. The same read as under:

“13. What emerges from a conspectus of the authorities is that : The determination of the rate of interest is guided, not by a single criterion, but a combination of factors. The purpose in Section 110CC fixing the date of the petition as the earliest part from which interest could be reckoned is to see that a claimant does not



stand to gain by his own delay in bringing the action. Unlike the position under the Administration of Justice Act, 1969 in England, the Tribunals under Section 110CC are not compelled to exercise the power to award interest.

The interest should not be awarded for the damage done. It should be awarded to the claimants for being kept out of money which ought to have paid to them. When a composite rate is applied, it is important to make a mental note of what items of the award go to the 'interest-pool' and what items do not go to 'interest-pool'. While special damages-sums actually spent or lost, up to the date of trial such as Medical charges, loss of earnings, and out of pocket expenses, etc. qualify for interest, however, the Award for loss of future earnings or the loss of dependancy cannot be said to be money kept out of the claimants because they pertain to a loss of the future income and are in fact paid in advance. This would mean that any composite rate of interest must take into account the size of the awards in the 'interest-pool' and of those in the 'non-interest' pool. The provisions for erosion of value of the money could only be so far as special damages are concerned, for the period between the incurring of the special damages and their realisation; and in the case of loss of future pecuniary benefits from the date of the award till date of realisation. But, as stated earlier, a composite rate can be evolved and applied keeping these distinctions in mind.

It is erroneous to predicate that there is anything in the law or the binding precedents that wherever interest is awarded, its rate should not be less than 12%. Both the award and the rate of interest are in the discretion of the Tribunal to be exercised judicially and judiciously, not arbitrarily or capriciously; but in accordance with sound principles. Generally speaking, a composite rate of 6% should be considered satisfactory without any specific itemisation because the component of compensation in the 'interest-pool' is comparatively smaller and the sizable component is the amount awarded for the loss of future dependency. We, however, hasten to add that the Tribunals have an undoubted discretion to award higher rates of interest, if in their opinion, the circumstances of the particular case justify such higher rates."

28. Both sides have, by relying on decisions in support of their respective pleas regarding the rate of interest, prayed that this Court should lay down the rate at which interest should be granted so that the same can act as guidelines for the tribunals to uniformly follow. While Mr. Gaur has endeavoured to show that the rate of





interest has been reduced to 6% p.a. by the Apex Court in some cases, Mr. Satya Narayan Padhee has relied on decisions wherein interest has been granted at 9% and even @12 % p.a. However, since I am of the view that no fixed rate of interest on compensation under the MV Act can be applied, I do not deem it necessary to deal with the decisions relied upon by the parties which all, I find turn on their peculiar facts. The duty to determine the appropriate rate of interest, having been bestowed on the Courts by the statute, it would not be desirable that any fixed rate of interest is laid down by this Court. The rate of interest has to be necessarily determined on a case to case basis; what may be a reasonable rate in one case may not be reasonable in another. I am, therefore, of the considered view that no uniform rate of interest can or should be prescribed on compensation under the MV Act.”

7. This affirms the view of the learned Single Judge that there is no fixed rate of interest on compensation that can be applied under the M.V. Act and the grant of appropriate rate of interest shall be governed by several factors which are to be determined on a case-to-case basis. In the instant case, the motor vehicle accident had occurred on 01.07.2018 and the claim petition was filed on 30.08.2018. The award was passed on 03.07.2023, i.e., within 05 years from date of filing of the claim petition. Considering that due to the Covid-19 pandemic that brought the world to a standstill, there has been an evident delay in adjudication. It is, thus a fit case where the rate of interest should be brought down to 7.5% p.a. The award of interest @7.5% p.a. along-with the awarded compensation, would also commensurate with the rate of interests, which are being given by the nationalised banks on Fixed Deposit Receipts as per Reserve Bank of India guidelines.

8. In view of the foregoing discussion, the present appeal is allowed and it is directed that the respondents/claimants shall be



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entitled to compensation awarded by the learned Tribunal with modified interest @ 7.5% p.a. from the date of filing of the claim petition till realisation. The amount of compensation be deposited with the learned Tribunal within four weeks from today, failing which, the appellant/insurance company shall be liable to pay the penal interest @ 12% p.a. from the date of this decision till realisation.

9. Accordingly, the appeal is disposed of along with the pending application.

DHARMESH SHARMA, J.

MARCH 19, 2024/ck