A DHARAMPAL & ORS.

v.

U.P. STATE ROAD TRANSPORT CORPN.

(Civil Appeal No.3501 Of 2008)

MAY 12, 2008

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[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ]

Motor Vehicles Act, 1988 – s.171 – Fatal Motor Accident – Interest @ 6% p.a. awarded by tribunal as also High Court – C *Enhancement, claim of – Held: At the relevant time, the prevailing rate of interest on bank deposits was 7.5% p.a. – In view of the same, interest on compensation sum awarded @ 6% p.a. enhanced to 7.5 % p.a.*

The question which arose for consideration in this D **appeal is with regard to the quantum of interest to be awarded on the compensation awarded to the legal representatives of the deceased who died in an accident.**

Disposing of the appeal, the Court

E **HELD: 1.1 As per section 171 of the Motor Vehicles Act, 1988 where the claim for compensation made under the Act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid *at such rate* from such date not** F **earlier than the date of making claim. [Para 8] [198-B,C]**

1.2 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 G **to determine such rate of interest. [Para 10] [198-E,F]**

1.3 In order to determine such rate, the observations made by this Court over the years are referred. The accident in the instant case took place on 1.9.2004 and the

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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 the case of *Tamil Nadu State Transport Corpn. Ltd.* 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, it is 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. 18.05.2005. Consequently, 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. [Paras 10 and 14] [198-F, 200-C,D,E]

Tamil Nadu State Transport Corpn. Ltd. vs. S. Rajapriya **(2005) 6 SCC 236 – relied on.**

National Insurance Co. Ltd. vs. Keshav Bahadur **(2004) 2 SCC 370;** *Kaushnuma Begaum (Smt.) and others vs. New India Assurance Co. Ltd. & others* **(2001) 2 SCC 9;** *United India Insurance Co. Ltd. and others vs. Patricia Jean Mahajan and others* **(2002) 6 SCC 281;** *Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another* **(2003) 3 SCC 148 – referred to.**

2. The issue with regard to enhancement of compensation is not pressed before this Court and consequently the prayer for enhancement of quantum of compensation as raised in the memorandum of appeal is dismissed. [Para 15] [200-F,G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3501 of 2008

From the final Judgment and Order dated 22/3/2007 of the High Court of Uttarakhand at Nainital in Appeal from Order (A.O.) No. 102/2007

Yunus Malik, Abhishek Vikas, Ravi Kishore and Prashant Chaudhary for the Appellant.

A Sangeeta Kumar and Ashwani Garg for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

B 2. The present appeal revolves around a very short issue, namely, the quantum of interest to be awarded on the compensation awarded to the legal representatives of the deceased who died in an accident. Before we deal with the issue that arises for our consideration, we will deal with the factual matrix out of which the aforesaid issue arises.

C 3. Deceased, Pradeep Kumar was driving a motorcycle along with his wife, two minor daughters and a minor son. When they reached village Dadiaki on the Muzaffarnagar – Roorkee Road, Bus No. UP15L 7640, allegedly driving at a very high D speed, rashly and negligently, hit the motorcycle. All the five persons traveling on the motorcycle died on the spot due to the aforesaid accident. The driver of the bus fled away from the place of occurrence immediately after the accident, leaving behind the bus. The age of the deceased Pradeep Kumar was 28 years and as per appellants he was earning an amount of E Rs.4,200/- per month. The appellants filed a petition No.202 of 2004 before the Motor Accident Claim Tribunal, Udham Singh Nagar, Rudrapur. Several witnesses were examined. On perusal of the evidence on record the Tribunal passed a judgment and awarded Rs.3,50,100/- as compensation to the appellants F along with interest @ 6% per annum from the date of application till the date of payment. The Tribunal upon consideration of the evidence held that the deceased was earning Rs.2,400/- per month and not Rs.4,200/- as claimed. Being aggrieved by the aforesaid award of the Motor Accident Claim Tribunal the G appellants preferred an appeal being Appeal No.102 of 2007 in the High Court of Uttrakhand at Nainital contending inter alia that it was clearly proved that the deceased was doing a work of mason and was earning Rs.4,200/- and the Tribunal erred in determining the income of the deceased on the presumption H that the job of the mason is not available everyday. Challenge

was made in the said appeal also in respect of the interest awarded contending inter alia that the rate of interest was on the lower side and the Tribunal should have awarded higher rate of interest.

4. The respondent – UP State Road Transport Corporation also filed an appeal which was registered as Appeal No.386 of 2005. Both the aforesaid appeals were taken up for consideration together as the issues that arose for consideration were similar. The Division Bench of the Uttarakhand High Court considered the evidence on record and dismissed the appeal filed by the respondent - UP State Road Transport Corporation whereas the appeal filed by the appellants was allowed to the extent that the appellants were held to be entitled to get a sum of Rs.3,70,000/- instead Rs.3,51,100/- as awarded by the Tribunal for the death of Pradeep Kumar. So far as the rate of interest is concerned, the High Court also maintained the interest at 6 % p.a. which was awarded by the Tribunal holding that the said rate of interest does not require any interference. The High Court directed the State Road Transport Corporation to deposit the enhanced amount of compensation within two months with interest, with the Tribunal.

5. The appeal is now filed by the appellants in this Court in respect of the quantum of compensation awarded as also in respect of the rate of interest which was awarded by the Tribunal as also by the High Court.

6. Learned counsel appearing for the appellants, at the time of arguments fairly stated before us that he would advance his arguments only in respect of the interest and would not like to press for the enhancement of quantum of compensation in terms of the prayers made in the memorandum of appeal.

7. Accordingly, we heard the learned counsel for the appellants only in respect of the issue of enhancement of rate of interest awarded by the Tribunal and also by the High Court, which is awarded and maintained as 6% per annum. Counsel for the appellants submitted before us that there are ample num-

A ber of cases decided by this Court for such claim of enhancement of rate of interest and in some cases the rate of interest has been consistently awarded by this Court at 9% per annum considering the claim of this nature The counsel for the respondent – UP State Road Transport Corporation pointed out that
B this is not a case for enhancement so far as the rate of interest is concerned, inasmuch as the prevailing rate of interest on bank deposit was only 6.5%.

8. As per section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as 'Act') where the claim for compensation made
C under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid *at such rate* from such date not earlier than the date of making claim.

D 9. In *National Insurance Co. Ltd. vs. Keshav Bahadur* reported in (2004) 2 SCC 370 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
E 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
F 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
G in the case of *Kaushnuma Begaum (Smt.) and others vs. New India Assurance Co. Ltd. & others* reported in *(2001) 2 SCC 9* on the question of 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 nation-
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alized 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:

> "**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 nationalized 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. and others vs. Patricia Jean Mahajan and others* reported in (2002) 6 SCC 281 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 the case of *Kaushnuma Begaum (supra)* interest @ 9 % was awarded in this case also. It was held as follows :-

> "In our view the reason indicated in the case of *Kaushnuma Begum (supra)* 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 the case of *Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another* reported in (2003) 3 SCC 148 it was held that the question as to

A 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.

B 13. However, in the year 2005 in *Tamil Nadu State Transport Corpn. Ltd. vs. S. Rajapriya* reported in (2005) 6 SCC 236 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 C 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 D be awarded would normally depend upon the bank rate prevailing at the relevant time. Since in the case of *State of Tamil Nadu State Transport Corpn. Ltd.* (supra) 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 appropri- E ate 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. 18.05.2005 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.

F 15. In terms of the above directions and observations the appeal stands disposed of directing the payment of interest at the aforesaid rate. So far as the issue with regard to enhancement of compensation is concerned, the same was not pressed before us and consequently the prayer for enhancement of quan- G tum of compensation as raised in the memorandum of appeal stands dismissed. However, in the circumstances of the case there will be no order as to costs.

N.J. Appeal disposed of.

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