National Insurance Co. Ltd., Calcutta

Vs

Life Insurance Corporation of India

Civil Appeals Nos. 551 And 552 of 1960

(S.K. Das, J. L. Kapur, A.K. Sarkar, M. Hidayatullah, Raghuvar Dayal JJ)

11.12.1962

JUDGMENT

HIDAYATULLAH, J. –

This is an appeal against the order of the Life Insurance Tribunal, Nagpur, dated December 12, 1952, by which a dispute about compensation payable to the National Insurance Company by the Life Insurance Corporation on the taking over of the life business of the former was decided. The National Insurance Company is the appellant and the Life Insurance Corporation is the respondent. Another appeal was filed by the Life Insurance Corporation against the same order but was not pressed at the hearing.

The National Insurance Company carried on life insurance business in addition to other insurance business and was what the Life Insurance Corporation Act, 1956 (31 of 1956), describes as a "composite insurer." The Life Insurance Corporation Act was passed in 1956 to nationalise the life insurance business of all insurers by transferring all such business to a Corporation established for the purpose. This Corporation is the well-known Life Insurance Corporation. Under the Act a distinction was made between 'controlled business' and other insurance business carried on by Insurance Companies. 'Controlled business' meant life insurance business and on and from a date to be fixed by notification in the Official Gazette called the 'appointed day' all the assets and liabilities of appertaining to the controlled business of all insurers were transferred to and vested in the Corporation. This date was September 1, 1956. The National Insurance Company was a composite insurer and its life business therefore stood transferred to and vested in the Life Insurance Corporation from the appointed day. Under s. 16 of the Life Insurance Corporation Act, the National Insurance Company was entitled to receive compensation from the Life Insurance Corporation in accordance with the principles contained in the First Schedule to that Act. To these principles we shall make a detailed reference presently. As the National Insurance Company was carrying on a composite business it was necessary to separate the 'assets appertaining to the controlled' business' from those appertaining to its other business under s. 10 read with s. 7 of the Corporation Act. These assets were defined in and Explanation added to s. 7(2) as follows :-

> "The expression "assets appertaining to the controlled business of an insurer" -
>
> (a) in relation to a composite insurer includes that part of the paid-up capital of the insurer or assets representing such part which has or have been allocated to the controlled business of the insurer in accordance with the rules made in this behalf;
>
> (b) in relation to a Government, means the amount lying to the credit of that business

on the appointed day."

Sections 7 and 10(2) conferred on the Central Government special rule-making powers and inter alia for the allocation of the paid-up capital or assets representing such paid-up capital, as the case may be, between the controlled business of the insurer and any other business. In pursuance of these provisions and s. 48 of the Act the Life Insurance Corporation Rules, 1956, were framed by the Central Government and Rule 18 provided for allocation of the paid-up capital of a composite insurer. We need not quote Rule 18 providing for the method of allocation of capital of a composite insurer because it was provided there that the paid-up capital allocable to the controlled business shall not, in any case, exceed a sum of Rs. 6,00,000 and the maximum amount applied to the National Insurance Company and was payable by it to the Life Insurance Corporation.

The Life Insurance Corporation determined Rs. 19,39,669 as compensation for the controlled business vested in the Corporation in accordance with s. 16 read with the First Schedule of the Life Insurance Corporation Act, 1956. After obtaining the approval of the Central Government, by a letter dated February 14, 1957, sent to the Company, the Corporation pointed out that the National Insurance Company was required to pay Rs. 6,00,000 under Rule 18 of the Life Insurance Corporation Rules, 1956, as assets appertaining to the controlled business and offered the balance of Rs. 13,39,669 in full satisfaction of the claim. The National Insurance Company asked for the calculation sheets and they were supplied by the Life Insurance Corporation. The National Insurance Company did not accept the compensation offered to it and requested that the dispute be referred to the Life Insurance Tribunal for decision but asked that the admitted amount might be paid to it without prejudice to the claim of either side. On May 1, 1957, the Life Insurance Corporation replied regretting its inability to pay the admitted amount except in full satisfaction of the claim as required by law. A request for reconsideration of the matter made by the National Insurance Company by a letter dated May 9, 1957, in which a sum of Rs. 27,99,275 was claimed as compensation was turned down by the Life Insurance Corporation and the dispute therefore stood referred to the Tribunal.

In making the reference to the Life Insurance Tribunal the Life Insurance Corporation forwarded the entire correspondence and the calculation sheets together with other documents on which the calculation sheets were based. Before the Tribunal, the Company claimed a sum of Rs. 43,29,470 as compensation due to it. The Company also gave its calculation sheets. In addition the Company claimed interest at six per cent. per annum from the appointed day (September 1, 1956) or at least from the date the compensation wrongly determined was offered to the Company, namely, February 14, 1957. Earlier, in the letters to which reference has already been made the National Insurance Company had demurred to the deduction of Rs. 6,00,000 from the amount of compensation offered to it. Its case before the Tribunal was that under the law, as it stood, the Corporation was bound to offer the entire compensation without making a deduction on this amount and the claim of the Corporation for the assets appertaining to the controlled business of the Company should be separately enforced.

The difference between the Company and the Corporation in the matter of calculation arose because the parties put different interpretations upon the provisions of the First Schedule to the Life Insurance Corporation Act. That Schedule is made under s. 16 of the Life Insurance Corporation Act, which reads :-

> "16. (1) Where the controlled business of an insurer has been transferred to and vested in the Corporation under this Act, compensation shall be given by the

Corporation to that insurer in accordance with the principles contained in the First Schedule.

(2) The amount of the compensation to be given in accordance with the aforesaid principles shall be determined by the Corporation in the first instance, and if the amount so determined is approved by the Central Government it shall be offered to the insurer in full satisfaction of the compensation payable to him under this Act, and if, on the other hand, the amount so offered is not acceptable to the insurer he may within such time as may be prescribed for the purpose have the matter referred to the Tribunal for decision."

We have already stated that the Corporation had offered compensation as approved by the Central Government after deducting Rs. 6,00,000, under Rule 18 and this offer was made in full satisfaction of the compensation payable to the Company as required by sub-s. (2). The Company refused to accept the offer but asked to be paid the admitted amount. This the Corporation declined. We are of the opinion that the demand of the Company for the admitted amount even though without prejudice to the contentions of the parties, was rightly rejected by the Corporation, as, under sub-s. (2) of s. 16, the Corporation could only make the offer and pay the money in full satisfaction of the claim for compensation. Sub-s. (1) of s. 16 refers to the principles contained in the First Schedule. That Schedule is divided into three parts which are marked A, B and C. It was admitted before us that part A alone applied and that part contains principles in two paragraphs called 'Paragraph 1' and 'Paragraph 2' and that Paragraph is to be applied to a particular case which is more advantageous to the insurer. Here Paragraph 1 is applicable. The relevant portions may now be read :-

"The compensation to be given by the Corporation to an insurer having a share capital on which dividend or bonus is payable, who has allocated as bonus to policy-holders the whole or any part of the surplus as disclosed in the abstracts prepared in accordance with Part II of the Fourth Schedule to the Insurance Act in respect of the last actuarial investigation relating to his controlled business as at a date earlier than the 1st day of January, 1955, shall be computed in accordance with the provisions contained in paragraph 1 or paragraph 2 whichever is more advantageous to the insurer.

Paragraph 1. - Twenty times the annual average of the share of the surplus allocated to share-holders as disclosed in the abstracts aforesaid in respect of the relevant actuarial investigations multiplied by a figure which represents the proportion that the average business in force during the calender years 1950 to 1955 bears to the average business in force during the calender years comprised in the period between the date as at which the actuarial investigation immediately preceding the earliest of the relevant actuarial investigations was made and the date at which the last of such investigation was made.

(Paragraph 2. Omitted)

Explanation 1. - For the purposes of paragraph 1,

(a) "relevant actuarial investigations" means such minimum number of latest actuarial investigations as at dates earlier than the Ist day of January, 1955 (not being less than two in any case), as would leave the period intervening between the date as

at which the actuarial investigation immediately preceding the first of such investigations was made and the date as at which the last of such investigations was made, to be not less than four years;

(b) "Average business in force" means the average of total sum assured by the insurer (including any bonus) in respect of his controlled business as on the 31st day of December of each of the relevant calender years.

Explanation 2. - For the purpose of paragraph 1, where an insurer has allocated to share-holders more than 5 per cent. of any surplus as is referred to therein, the insurer shall be deemed to have allocated only 5 per cent. of the surplus and where an insurer has not allocated any such surplus to share-holders or has allocated to share-holders less than 3 1/2 per cent. of any such surplus, the insurer shall be deemed to have allocated 3 1/2 per cent. of the surplus.

To understand these provisions we have first to see certain provisions of the Insurance Act, 1938 (4 of 1938). That Act was passed to consolidate and amend the law relating to the business of insurance. Under s. 13 of the Insurance Act every insurer including a company carrying on life business was required, in respect of the life insurance business transacted, once at least in every five years to cause an investigation to be made by an actuary into the financial condition of the life insurance business including a valuation of the liabilities in respect thereto and was further required to cause an abstract of the report of such actuary to be made in accordance with Parts I and II of the Fourth Schedule to the Insurance Act. The period of five years in s. 13 was altered to three years by the Insurance (Amendment) Act. 1950 (47 of 1950) with effect from June 1, 1950. Fourth Schedule was divided into two parts. First part contained Regulations and the second part laid down the requirements applicable to the abstract in respect of life insurance business which had to be prepared at these investigations. Regulation (1) laid down that all abstracts and statements must be so arranged that the numbers and letters of the paragraphs correspond with those of the paragraphs of Part II of that Schedule. In other words, the abstracts and statements prepared by the actuary were required to follow the same scheme and to supply the particulars in the same order as stated in Part II. Part II prescribed a number of tabular statements which were required to be annexed to every abstract prepared in accordance with Part II. Among them were (i) a Consolidated Revenue Account in form G for the inter-valuation period, and, (ii) a Valuation Balance-Sheet in the Form I. 'Inter-valuation period' was defined to mean :-

"as respects any valuation, the period to the valuation date of that valuation from the valuation date of the last preceding valuation in connection with which an abstract was prepared under this Act or under the enactments repealed by this Act, or, in a case where no such valuation has been made in respect of the class of business in question from the date on which the insurers began to carry on that class of business;"

In plain language it meant a period between two valuation dates. The minimum period was fixed at first as five years and after June 1, 1950, as three years. In our case, the first valuation covered a period of five years and the second a period of three years and the only 'intervaluation period' was the period of three years which was between the two valuation dates.

The abstract was required to show the valuation date and the general principles and full details of the methods adopted in valuation of each of the various classes of Insurance and annuities. In

addition the abstract was required to show the other matters which the actuary had taken into account in preparing the actuarial estimates. Then followed paragraph No. 8 in which was required to be shown the total amount of profits arising during the intervaluation period including profits paid away and sums transferred to the reserve fund or other accounts during the last period and the amount brought forward from the preceding valuation and the allocation of such profits under different headings. Among these were the amounts allocated as bonus to the policy holders and as dividend among the share-holders including amounts which had already passed through the accounts during the inter-valuation period which were to be shown separately.

Section 49(1) then provided inter alia that no insurer including a company, who carried on business of life insurance shall, for the purpose of declaring or paying any dividend to share-holders or any bonus to policy-holders, utilize directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub-class of insurance business as the case may be, except a surplus shown in the valuation balance-sheet in Form I as set forth in the Fourth Schedule submitted to the Controller as part of the abstract referred to in s. 15 as a result of an actuarial valuation of the assets and liabilities of the insurer. Sub-section (2) of s. 49 then laid down that for the purpose of sub-s. (1), the actual amount of income-tax deducted at source during the period following the date as at which the last preceding valuation was made and preceding the date as at which the valuation in question was made might be added to such surplus after deducting an estimated amount for income-tax on such surplus, such addition and deduction being shown in paragraph 8(1) of the abstract prepared in accordance with Part II of the 4th Schedule to the Act.

One of the disputes between the parties arose over the surplus to be taken into account in calculating the compensation. This dispute was whether it should be the net surplus as shown in Form I annexed to the abstract or should include the income-tax and interim bonus as shown in the abstracts. The Company claimed that it should include interim bonus already paid and income-tax deducted at source less the provision for income-tax on the surplus as stated in the abstracts while the Corporation claimed that these additions should not be made. The figures for the two actuarial investigations were therefore these : Rs. 41,44,686 (1945-50) and Rs. 70,21,280 (1951-53) according to the Corporation based on Form I Part II 4th Schedule and Rs. 56,36,815 (1946-50) and Rs. 87,03,650 (1951-53) according to the Company based on the abstracts with the aforesaid additions. The Tribunal accepted the larger figures for the two periods and the appeal of the Corporation was filed to question this part of the decision. This controversy need not be decided because the Corporation did not press its appeal before us and the basic figures are thus Rs. 56,36,815 (1946-50) and Rs. 87,03,650 (1951-53).

Before we enter into a discussion of the terms of the First Schedule of the Life Insurance Corporation Act, 1956, laying down the principles for determination of compensation we shall summarise in the form of a formula what is admittedly the purport of these principles applicable to this case. This formula is :-

Annual average of the surplus deemed to be Average business inCompensation allocated to the share force during 1950-55payable. = 20x holders as disclosed x -------------------- in the abstracts. Average business in force during 1946-53##

Two matters arising from these provisions may be disposed of as there is no dispute about them. Firstly, there is no dispute about the multiple 20. Secondly, there is no dispute that the result was to be multiplied by a figure which represented the proportion the average business in force during the calender years 1950-1955 bore to the average business in force during the calender years comprised

in the period between the date as at which the actuarial investigation immediately preceding the earliest of the relevant investigations was made and the date at which the last of such investigations was made (here the years 1946-53). This factor is 138970857 and was admittedly the result of dividing Rs. 55,84,073 (average business in force during 1950-55) by Rs. 40,18,64,885 (average business in force during 1946-53). The only dispute in the case is with regard to the annual average of the surplus deemed to be allocated to the shareholders as disclosed in the abstracts in respect of the relevant actuarial investigation.

Admittedly two investigations were made in the present case. One valuation period covered five calender years 1946-1950 and the other three calender years 1951-1953. In the two investigation periods the total surplus was respectively Rs. 56,36,815 (1946-50) and Rs. 87,03,650 (1951-53). The surplus allocated to the share-holders was Rs. 4,08,456 (1946-50) and Rs. 6,40,504 (1951-53). This was in excess of the five per cent. as laid down in explanation 2 to Paragraph I to the First Schedule of the Life Insurance Corporation Act already quoted. Reducing this surplus allocated to the share-holders to five per cent. We get for the years 1946-50 the sum of Rs. 2,81,841 and for the years 1951-53 the sum of Rs. 4,35,182. We may now again state the formula with these figures and the factor introduced in the appropriate places to show the area of controversy left.

Annual average ofCompensation Rs. 2,81,841 (1946-50)payable. = 20x and Rs. 4,35,182 x 1.38970857 (1951-53) allocated to the share-holders.##

Now the dispute between the parties is (a) what it the period in which the allocation to the share-holders can be said to be made and (b) what is meant by 'annual average.' In regard to (a) the company claims that the surplus must be taken to be allocated to the period in which the surplus must have been handed out to the share-holders and that can only be the period following the investigations. In this case the first investigation covered a period of five calender years from 1946 to 1950 (both inclusive), and the valuation date was December 31, 1950. The second investigation covered a period of three calender years from 1951 of 1953 (both inclusive) and the valuation date was December 31, 1953. The Company contends that the allocation of Rs. 2,81,841 took place in the triennium between the two valuation dates and similarly the allocation of Rs. 4,35,182 took place in the two complete calender years (1954 to 1955) following December 31, 1953, before the controlled business was taken over by the Corporation on September 1, 1956.

The Corporation contends that the surplus must be taken to have been allocated in the years for which the investigation was made. In other words, the sum of Rs. 2,81,841, must be deemed to be allocated in the five years for which the first investigation was made (calender years 1946-50) and the sum of Rs. 4,35,182 must be deemed to have been allocated in the three years for which the second investigation was made (calender years 1951-53).

Then comes the next part of the dispute which is over the meaning of the words 'annual average'. Both sides claim to calculate the average on different principles. The Corporation adds the two surpluses deemed to be allocated to the share-holders and divides the result by eight years, that is to say, the sum total of the two investigation periods of five years and three years. The Company on the other hand has four alternative modes of calculation. Two such modes are based on the basis of allocation to 3 and 2 years as stated by the company and two on the basis of the allocation to 5 and 3 years as stated by the Corporation. These calculations lead to the following different results :-

FORMULA A(based on annual average calculated as suggested by the Company of thetwo sums allocated as suggested by the Company). 2,81,841 4,35,18220 (------- + -------- x 1/2) x 1.38970857

3 years 2 years = Rs. 43,29,470 FORMULA B(based on annual average calculated as suggested by the Corporationof the two sums allocated as suggested by the Company). 2,81,841 4,35,18220 (------- + --------) x 1.38970857 3 years 2 years = Rs. 39,85,812 FORMULA C(based on annual average calculated as suggested by the Companyof the two sums allocated as suggested by the Corporation). 2,81,841 4,35,18220 (------- + -------- x 1/2) x 1.38970857 5 years 3 years = Rs. 27,99,276 FORMULA D(based on annual average calculated as suggested by the Corporationof the two sums allocated as suggested by the Corporation). 2,61,841 4,35,18220 (------- + --------) x 1.3890875 5 years 3 years = Rs. 24,91,123##

Formula D was adopted by the Corporation but as the basic figures were lower the resulting amount was Rs. 19,39,669. The Tribunal also approved formula D but as the basic figures were increased by the Tribunal, the amount awarded was Rs. 24,91,123. The question is which of the formulae must be applied. This depends upon :-

> (1) How is the annual average in paragraph I of the First Schedule to the Life Insurance Corporation Act to be calculated ?
>
> (a) Is the surplus allocated in the years for which the investigation is made or in the years that follow till the next valuation date ?
>
> (b) Is the annual average the average of the total amount divided by the number of years involved in the two investigations, (formula D) ?
>
> or
>
> (c) Is the annual average the average of the average of each period taken separately ?

The Tribunal in reaching its conclusion observed that "paragraph I does not provide for taking two averages but only one average for the entire period of account." It rejected formulae A and C above as they involved an average of an average. The Tribunal then followed its own decision in an earlier case and held that the Paragraph I of the Schedule did not warrant the construction sought to be placed by the Company. The Tribunal had observed there as follows :-

> "The paragraph does not refer to the years during which the amount of dividend in the abstract is actually paid to the share-holders. It refers to the surplus allocated to shareholders as disclosed in the abstract and requires annual average to be taken of the share of such surplus. Therefore, on a plain reading of this paragraph the annual average has to be taken of the share of surplus allocated as shown in the abstract, or in view of Explanation 2, deemed to be allocated to share-holders on calculations now made."

It is contended by the Company that the decision of the Tribunal is not correct. In support of the construction which the Company seeks to place upon Paragraph I it is argued that the word is "allocation" and a sum cannot be allocated till it is known. Further it is said the allocation can only be made after the share-holders get a right to dividend which would be after the report of the actuary. It is, therefore, contended that since the sum was not known during the period for which the investigation was made and the share-holders had no right till after the ascertainment of the profits by an actuary, the word "allocation" can only be read in relation to the years that follows the actuary's report and not in relation to the period for which the actuary makes the investigation. It is also argued that the language of the paragraph does not bear the construction which the Tribunal has

placed upon it.

The learned Attorney-General, however, admits that the construction which he seeks to place may fail at least in the last of the two periods in those cases where the last valuation date is within a few months of September 1, 1956. If the valuation date in the present case had been December 31, 1955, there should have been no complete year for which the allocation could be said to have been made and the calculation on the basis suggested by the Company would have been impossible. Again, if instead of the last valuation on December 31, 1953, it had been made on December 31, 1954, the whole of the profits would then be deemed to have been allocated to one year instead of two. It is clear enough that the Paragraph could not be intended to prescribe an uncertain system of calculation but something definite. The compensation was meant to give to the shareholders an equivalent of their annual profits capitalised at 20 years purchase and to reflect the advance or fall in the business by multiplying the result with the factor. The intention therefore is to get a true average spread over a number of years so that compensation may not be related to any exceptional year or years - whether in favour of the insurer or against him. It is intended that it should be based upon what represents the average business done by a company over a number of years. This intention is quite evident from the Explanations which have been added to the paragraph. Explanation 1(a) shows that there should be not less than two actuarial investigations and they should cover a period of not less than four years. This shows that the intention was to base the calculation upon a wide view of a company's business.

Now, 'allocation' means the allocation as made in the abstracts. Part A says that the compensation to be given by the Corporation to an insurer having a share capital on which dividend or bonus is payable and who has allocated as bonus to policy-holders the whole or any part of surplus as disclosed in the abstracts, shall be computed in accordance with the provisions contained in one of the two paragraphs that follow. The words of the Schedule to be emphasised are "has allocated as bonus to policy holders the whole or any part of the surplus as disclosed in the abstracts." The abstracts are nothing but a summary of the investigations over a particular period and the allocation of bonus and dividends must also be for the same period. The abstracts contain no reference to any future period and in fact there are no words in the abstracts which show that the allocation must be for the years that follow. In paragraph I the words are "the share of the surplus allocated in respect of the relative actuarial investigations." These words refer to the abstracts and the share of the surplus stated therein. Since that share comes out of the profits which accrue to the Company during the period of investigation the allocation must also be taken to be for the period during which the profits arise. The argument of the learned Attorney General that the allocation can only be when the amount is known and also when the right accrues to the share-holders because the profits have to be found first is not acceptable to us because life insurance business is carried on with periodic actuarial investigations which shows how much profits have been made and that depends on what the existing liability of the Company is in relation to its reserves and other likely income. It is the result of these investigations which entitles the policy-holders as well as the share-holders to share in the profits whether by way of bonus or dividend but the share is in respect of the years for which the investigations were made. Profit can only be found after the receipts of a particular period have been found and compared with the payments that have been made during the same period and the liabilities existing on the date on which the actuarial investigation is made, are found out, and the reserves which have to be kept to make good these liabilities are ascertained. To connect the profits with a future period is to make the scheme unworkable because insurance business is based upon the actuarial assessments of the position of the company. Nothing much turns upon the use of the singular in "share" and "surplus" and it cannot be said that they indicate that the two "shares" and "surpluses" cannot be aggregated. Indeed even after aggregation the words "share" and "surplus"

will still continue to be applicable. In our judgment, the Tribunal was right in holding that the surpluses were related to the five years and three years respectively covered by the two actuarial investigations in this case and must be deemed to have been allocated for the same period.

The next question is how is the average to be found. Here the words are "annual average". The word "annual" must be given its full meaning. By the word "annual" is meant something which is reckoned by the year. The addition of the word "averages" shows that what is to be found is an average reckoned by the year. If the two periods were to be viewed separately and an annual average is found out for each of the periods there would be two annual averages and they would almost always be different. When an average of these periods is taken there is no longer an "annual average". The result can only be described as the average of two annual averages. The Tribunal was right when it said that the law contemplates one average and not the average of two averages. Giving the word "annual" its full meaning it is obvious that that system must be adopted which will lead to a result which can be described both as "annual" and as an "average". That can only be when the amount of the surplus as disclosed in the two investigations is aggregated and the result is divided by the total number of years. One finds an average by dividing the aggregate of several quantities by the number of quantities. In this case one can only get the "annual average" by aggregating the surplus related to at least two actuarial investigations covering a period of more than four years and by dividing the result and by the number of years involved. In our judgment formula D alone was applicable to the facts of this case and as that formula has been applied the result reached by the Tribunal was correct.

It remains to consider the other two questions which have been debated before us and they are whether in making the offer the Corporation was entitled to make a deduction on account of the assets of the controlled business which were of the value of Rs. 6,00,000. The Tribunal has also ordered the Corporation to pay the amount of compensation, less Rs. 6,00,000 due to the Corporation. Apart from any other consideration, it seems to us somewhat anomalous that the Company should demand that the whole of the compensation should be paid to it and the Corporation be left to its own devices to recover this admitted sum due to it. In a case of this type the Corporation was entitled to say : "You have our Rs. 6,00,000. You pay yourself that amount and here is the balance". Such an attitude is so just that it is impossible to hold that the Tribunal ought to have reached any other conclusion except this. No doubt, the Act says that the Corporation shall pay the compensation due to the Company but in another part it also says that the Company shall pay in lieu of the assets of pertaining to the controlled business a sum of Rs. 6,00,000. These two provisions of law must be read together and in our opinion the Corporation was entitled to a set-off in respect of the amount due to it and the Tribunal was perfectly right when it ordered such a set-off.

The last question is whether interest was payable. The Tribunal held that it had no jurisdiction to award interest because there is no provision in the Act. It followed its own decision in the order passed in an earlier case and declined to grant interest. During the arguments before us the Corporation agreed that interest is awardable and the dispute only centred round the rate of interest, the amount on which it is payable and the date from which is should be given. There is no doubt that the Life Insurance Corporation Act and the Rules do not contain any express provisions for grant of interest. The Company relied on cases of purchases of immovable property where interest is awarded as a general rule of equity if the purchaser enters into possession without having paid the purchase-money to the seller. The reason of the rule was stated a long time ago by Lord St. Leonards L.C. Birch v. Joy [(1852) III H.L.C. 565 : 10 E.R. 222.] as follows. -

> "The parties change characters, the property remains at law just where it was, the

> purchaser has the money in his pocket, and the seller still has the estate vested in him; but they exchange characters in a Court of Equity, the seller becomes the owner of the money and the purchaser becomes the owner of the estate".

On entering possession the purchaser becomes entitled to the rents but if he has not paid the price, interest in equity is deemed payable by him on the purchase price which belongs to the seller. This principle was applied by the House of Lords in cases of compulsory purchases. In Swift & Co. v. Board of Trade [[1925] A.C. 520.] Viscount Cave L.C. gave the reason that the practice rests upon the principle that the taking of possession is an implied agreement to pay interest which was stated by Sir William Grant M.R. in Fludyer v. Cocker [(1805) 33 E.R. 10.]. This principle was further extended by the Privy Council to the compulsory taking over of a business as a going concern in International Railway Company v. Niagara Parks Commission [(1944) A.C. 328.].

In this Court also the principle was applied to the East Punjab Requisition of Immovable Property Act (Temporary Powers Act) (Pun. 48 of 1948) replaced by the Punjab Requisition and Acquisition of Immovable Property Act (Pun. 11 of 1953) : vide Satinder Singh v. Amrao Singh [[1961] 3 S.C.R. 676, 694.]. Under that Act though compensation was payable there was no provision for the payment of interest. This Court approved the decision of the Privy Council in Inglewood Pulp and Paper Company Ltd. v. Brunswick Electric Power Commission [[1928] A.C. 492.]. Where the Judicial Committee had observed -

> "But for all that, the owner is deprived of his property in this case as much as in the other and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The right to receive interest takes the place of the right to retain possession and is within the rule".

This Court observed as follows :-

> "It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of the right to retain possession".

The learned counsel for the Corporation did not give any reply to the argument detailed above and agreed to pay interest. In this view of the matter it is not necessary to express an opinion whether interest can be demanded by the company. We have only to determine the rate and the amount on which and the date from which interest should run. In the present case compensation was payable in full satisfaction only of all claims. The Corporation offered compensation as determined by it in full satisfaction and refused to pay it unless the Company gave a discharge to the Corporation from all liabilities and claims. This amount was found to be incorrect and insufficient and the refusal of the Company to receive it was justified. We have held already that the Corporation could not pay the admitted sum tentatively even though without prejudice to the rights of the parties. The offer was made on February 14, 1957. In view of the fact that some time must elapse before the compensation is worked out it would, we think, be fair to award interest from February 14, 1957, which was the date when the dispute was referred to the Tribunal. We think interest in this case should be calculated at four per cent. simple. That is the usual rate which is awarded by courts in such circumstances. The compensation has been found to be Rs. 24,91,133 under formula D which we have held was the correct formula to apply. The Corporation was entitled to set-off Rs. 6,00,000 representing the assets of the controlled business. Interest on the balance (Rs. 18,91,133) will be

payable at four per cent per annum simple from February 14, 1957, till October 31, 1957, when Rs. 5,51,464 were withheld and the balance was paid to the Company. Interest on Rs. 5,51,464 at four per cent. shall be payable from November 1, 1957, till December 26, 1957. There shall be no interest payable on Rs. 6,00,000 as claimed by the appellent.

In the result this appeal fails except for the grant of interest. It is dismissed except for interest granted by us. The Company shall bear its own costs and pay that of the Corporation. The appeal of the Corporation is dismissed with costs. There will be a right to set-off the costs in the two appeals.

C.A. No. 551 of 1960 dismissed except for interest. C.A. No. 552 of 1960 dismissed.

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