

# RAJASTHAN HIGH COURT

Union of India

Vs.

Shamim

C.M.A. No. 263 of 1997

(Shiv Kumar Sharma and Mahesh Chandra Sharma, JJ.)

10.01.2008

## JUDGEMENT

**Shiv Kumar Sharma, J.**

1. The questions arise for our consideration are :

- (i) Whether the Railway Tribunal has the power to grant interest under the Railways Act 1989 or under the Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 or not?
- (ii) Whether in the absence of any explicit provision empowering the Railway Tribunal with the power to grant interest, can such a power be read implicitly into the Act or the Rules or not?
- (iii) Whether in case of absence of any express provision empowering the Tribunal of granting interest, whether an implied bar can be read into the Act or the Rules prohibiting the Railway Tribunal granting interest or not?
- (iv) In case the Railway Tribunal does have the power to grant interest, should the interest be granted from the date of filing of the claim petition, or the interest should be calculated from the date of the passing of the award?

2. The above questions arise in this way :-

In *Smt. Jeeto Devi v. Union of India* <sup>1</sup> learned single Judge held that interest on the claim can be granted from the date of filing of claim petition. Whereas in *Union of India v. Master Varun Bagdi* <sup>2</sup> since there is no specific provision to award interest in Railway Claims Tribunal Act, 1987 (for short 1987 Act). Because of these contradictory views the matters have been referred to us.

SCHEME OF 1987 ACT:

3. Before proceeding further it will be apt to consider the scheme of 1987 Act, which provided for establishment of Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or Incidental thereto.

4. As per Section 16 of 1987 Act a person seeking any relief in respect of the matters referred to in sub-section (1) or subsection (1A) of Section 13 may make an application to the Claims Tribunal. Section 13 reads as under:-

"13. Jurisdiction, powers and authority of Claims Tribunal.

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were ex-excisable immediately before that day by any civil Court or a Claims Commissioner appointed under the provisions of the Railway Act -

(a) Relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railway Act in respect of claims for -

(i) Compensation for loss, destruction, damage, deterioration or non delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) Compensation payable under Section 82A of the Railways Act or the rules made there under; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

1A The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124A of the Railways Act, 1989 (24 of 1989) all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil Court in respect of claims for compensation now payable by the railway administration under Section 124A of the said Act or the rules made there under.

(2) The provisions of the Railways Act, 1989 (24 of 1989) and the rules made there under shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."

5. In respect of the procedure and powers of claims tribunal it is indicated in Section 18 that the Claims Tribunal shall not be bound by the procedure laid down by the

Civil Procedure Code, 1908 (5 of 1908) but shall be guided by the principles of natural Justice and subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its inquiry. According to subsection (3) of Section 18 Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil Court under the Civil Procedure Code, while trying a suit in respect of the following matters :-

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of documents;
- (c) Receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) Issuing commissioner for the examination of witnesses or documents;
- (f) Reviewing its decisions;
- (g) Dismissing an application for default or deciding it ex parte;
- (h) Setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (i) Any other matter which may be prescribed.

(Emphasis supplied)

6. Section 24 of 1987 Act provides for the transfer of every suit, claim or other legal proceeding (other than appeal) pending before any Court, Claims Commissioner or other authority immediately before the appointed day, being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after the appointed day, within the jurisdiction of the Claims Tribunal, shall stand transferred on that day to the claims Tribunal. It is therefore, obvious that every suit pending before any Court before the appointed day would stand transferred to the Claims Tribunal, if the cause of action thereof is one that would have been, if it had arisen after the appointed day, within the jurisdiction of Claims Tribunal.

7. Section 30 empowers the Central Government to make rules. In exercise of this power Railway Claims Tribunal (Procedure) Rules 1989 (for short '1989 Rules') were framed. Rule 44 of 1989 Rules lays down that nothing in the Rules shall be deemed to limit or otherwise affect the inherent power of Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

## CONCEPT OF INTEREST:

8. Under Section 34 of the Civil Procedure Code a Civil Court can award interest. The award of interest however is entirely in discretion of the Civil Court. Section 34 reads as under:-

"S. 34 Interest.-

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order itself 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 of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I. In this sub-section "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

Explanation II. For the purpose of this Section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit there for shall not lie.

9. Black's Law Dictionary (Fifth Edition) defines the word "interest" thus:-

"The most general term that can be employed to denote a right, claim, title, or legal share in something. In its application to lands or things real, it is frequently used in connection with the terms "estate" "right" and "title". More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title.

10. Division Bench of Madhya Pradesh High Court had occasion to consider Section

34 Civil Procedure Code in *Union of India v. Laxmipati* <sup>3</sup> and it was held as under :-

(Para 9)

"Section 34 Civil Procedure Code deals with interest for the post-litigation period. Where decree is or payment of money, the Court may order interest at a reasonable rate on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged for any period prior to the institution of the suit. It is unnecessary to refer to the other details of the provision. It is true that the Indian Railways Act, 1890 or the Rules framed there under do not contain an express provision making Section 34 Civil Procedure Code applicable to proceedings before the Claims Commissioner. But for the provisions in the Indian Railways Act, 1890 the Claimant would have resorted to a suit for damages in a Civil Court. Had such a suit been filed, the Civil Court in a position to award post litigation interest. The provisions under the Indian Railways Act, 1890 had the object of changing the forum from Civil Court to the Claims Commissioner with a view to provide cheaper and more expeditious remedy for the claimants. It could not be that the legislature intended that a benefit which the claimant would have derived at the hands of the Civil Court should be taken away by the mere change of forum. Under the 1950 Rules, a person shall not be qualified for appointment as Claims Commissioner unless he has been or is qualified for appointment as a Judge of the High Court, or is/has been exercising powers of a District Judge, or is or has been exercising the powers of a District Magistrate. The Act provided a right of appeal to the High Court by the claimant but not by the Government or the railways. To deny post litigation interest would amount to depriving the claimant of compensation for delay in obtaining relief for no fault of his. We hold that even though Section 34. Civil Procedure Code has not been expressly made applicable to the proceedings before the Claims Commissioner, there is no reason to hold that the principles of Section 34 Civil Procedure Code would be inapplicable."

(Emphasis supplied)

11. Division Bench of Punjab High Court in *CIT v. Dr. Sham Lal Narula* <sup>4</sup> articulated the concept of interest thus :-

(Para 8)

"The words "interest" and 'compensation' are sometimes used interchangeably

and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money.... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another other, or for the delay in paying money after it has become payable."

12. Mulla on the Civil Procedure Code (1995 Edn.) sets out three divisions of interest as dealt in Section 34 Civil Procedure Code. The division is according to the period for which interest is allowed by the Court, namely, (1) interest accrued due prior to the institution of the suit on the principal sum adjudged; (2) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such rate as the Court deems reasonable; (3) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the Court thinks fit, at a rate not exceeding 6 per cent per annum. Popularly the three interest are called pre-suit interest, interest pendente lite and interest post-decree or future interest.

#### CONCLUSION:

13. That takes us to the observations of learned single Judge indicated in *Union of India v. Master Varun Bagdi* (supra) that read thus :-

(Para 8)

"In the absence of any specific provision in the Act for awarding interest on the compensation determined by Tribunal, the learned Tribunal, has erred in awarding the interest at the rate of 12% p.a. from the date of filing of the claim application till the realization."

14. These observations, in our opinion, do not lay down correct legal position. Words "Any other matter" indicated in sub-section (3)(i) of Section 18 of 1987 Act include all the functions of the Civil Court. The Tribunal discharges its functions as are vested in a Civil Court and while deciding claim petition it possesses the powers to award interest under Section 34 of the Civil Procedure Code.

15. Learned counsel for the Union of India contended that in terms of Section 18 of

1987 Act, there has been restricted application of the Civil Procedure Code and further that Section 34 of Civil Procedure Code has not been made applicable to the Railway Claims Tribunal.

16. On a plain reading of Section 18, it is not possible to accept the contentions of the learned counsel for the Union of India since there exists no specific bar to the application of the Civil Procedure Code in the aforesaid provision of law. On the contrary, the provision basically unshackles the Tribunal from the procedural laws mandated in the Code while at the same time maintaining the requirement of natural justice. The provision is clearly enabling and not a 'disabling' provision. The provision does not specifically take away from the Tribunal the power and authority to exercise any or all provisions of Civil Procedure Code and therefore, it is clear that Section 34 Civil Procedure Code continues to be vested in the authority of the Railway Claims Tribunal.

17. Even Section 13(1) of 1987 Act vests the Claims Tribunal with the authority to exercise all such jurisdiction, powers and authority, as were exercisable by any Civil Court, which obviously would include the power to grant interest under Section 34 of the Civil Procedure Code.

18. The principle of law that would emanate is that although 1987 Act does not specifically vest the Tribunal with the authority to grant pendent lite interest, yet the power and authority to grant such pendent lite interest, flows from Section 18(3)(i) and Section 13(1) of 1987 Act read with Section 34 of the Civil Procedure Code 1908.

19. In view of discussions made herein above, we answer the reference thus:-

Questions (1) (ii) and (iii) :

Answer:

Although 1987 Act does not specifically vest the Tribunal with the Authority to grant interest, yet the power and authority to grant interest flows from Sections 18(3)(i) and 13 (1) of 1987 Act read with Section 34 of the Civil Procedure Code, 1908.

Question (iv):

Answer:

Discretion is vested with the Tribunal in view of Section 34 Civil Procedure Code, in the facts and circumstances of the case, to grant interest either from the date of petition or from the date of award.

20. Let the matters be placed before Hon'ble the Chief Justice.

Order accordingly.

Cases Referred.

1. (SB Civil Misc. Appeal No. 1382/2004 decided on July 6, 2005)
2. (2005)3 Diwani Nirnay Journal (Raj) 1294
3. (AIR 1995 MP 90)
4. (AIR 1963 Punjab 411)