

CASE NO.:
Appeal (civil) 747 of 2001
Special Leave Petition (civil) 16945 of 2000

PETITIONER:
M/S. JIT RAM SHIV KUMAR

Vs.

RESPONDENT:
NATIONAL INSURANCE COMPANY LTD.

DATE OF JUDGMENT: 22/01/2001

BENCH:
S.V.Patil, D.P.Mohapatro

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

Shivaraj V. Patil, J.

Leave granted.

In this appeal the controversy raised is limited in regard to payment of interest and it arises out of the order passed by the National Consumer Disputes Redressal Commission on execution side. For the purpose of disposal of this appeal it is unnecessary to narrate the facts in detail. Hence we briefly state them as under: -

The appellant filed Original Petition No.30 of 1992 before the National Consumer Disputes Redressal Commission (for short the National Commission) against the respondent National Insurance Co. Ltd. The said petition was allowed by the order of the National Commission dated 15.4.1993. Operative portion of it reads: -

There is, therefore, no doubt that the repudiation of the claim by the Opposite Party-Insurance Company is malafide. There has also been inordinate delay in repudiating the claim depriving the complainant of a sum of Rs.8,20,575/- which obviously would have caused serious inconvenience and financial embarrassment of the insured. We therefore order as under:

The opposite Party Insurance Co. should pay to the complainant-insured as under; 1. Rs.8,20,575/- the full insured value of the consignment, actually paid by the complainant for import of logs of wood. 2. Interest at the rate of 18% per annum after the elapse of 6 months from the date of lodging of the claim on 12.2.1987 viz. from 12.6.1987. 3. A compensation of Rs.1.00 lakh for the unjustified delay and harassment to the insured in repudiating the claim. 4. Interest at the rate of 18% on the above mentioned amounts after 30 days of the date of this order till the payment is made.

Against the said order of the National Commission the respondent filed Civil Appeal No. 3110/93 and the appellant filed Civil Appeal No. 4330/93 in this Court to the extent they were aggrieved. This Court, by order dated 23.9.1999, disposed of both the appeals. By the said order Civil Appeal No. 3110/93 was partly allowed rejecting the claim of the appellant for compensation to the tune of Rs.1.00 lakh and dismissed Civil Appeal No. 4330/93 filed by the appellant. While dealing with Civil Appeal No. 3110/93, filed by the respondent, this Court has stated, thus: -

So far as the question of quantum of interest is concerned, we see no infirmity in the order passed by the Commission except that the order of the Commission requires a little alteration so that the date 12.6.1987 is altered to 12.8.1987 in consonance with the judgment of the Commission itself.

The amount of compensation to the tune of Rs. 1 lakh has been ordered by the Commission on the ground of unjustified delay and harassment of the respondent. Having regard to the facts of this case, specially the fact that the loss of timber which was purchased was loaded at Malaysia and the ship which was to come to Visakhapatnam was lost on High Seas and having regard to the further fact that the investigation in the claim of the respondent who had initially not furnished all the documents to the appellant, had to be carried in a foreign country with the help of the surveyor, the appellant were justified in taking time in repudiating the claim of the respondent after due investigation. To that extent, therefore, the claim of the respondent is liable to be rejected and is hereby rejected. In view of the above the appeal is partly allowed. The claim of the respondent for compensation to the tune of Rs. 1 lakh allowed by the Commission is rejected but the rest of the order is maintained. The appeal is disposed of in the matter indicated above.

Since the amount paid by the respondent did not satisfy the claim fully, the appellant filed execution petition before the National Commission being Miscellaneous Petition No. 5/2000 (in Original Petition No. 30/1992). The National Commission passed the following order in the said Miscellaneous petition: -

We have read the papers. We are of the view that the order of the Supreme Court is carried out by the Insurance Company. The Miscellaneous Petition is disposed of.

It is this order, which is impugned in this appeal.

The learned counsel for the appellant, pointing out to the order of this Court dated 23.9.1999, aforementioned, contended that the order of the National Commission giving direction for payment was confirmed by this Court except direction 3, i.e., payment of the compensation of Rs.1.00 lakh for the unjustified delay and harassment to the respondent in repudiating the claim. He added that this Court did not find any infirmity as far as the question of payment of interest is concerned. The learned counsel submitted that the National Commission did not consider as to whether the entire amount that was to be paid according

to the order of the National Commission contained in directions 1, 2 and 4 as affirmed by this Court, was paid to the appellant or not; without anything more the National Commission simply stated that the order of the Supreme Court was carried out by the Insurance Company; hence the Miscellaneous Petition was disposed of. The learned counsel further submitted that a certificate issued by the Chartered Accountant clearly shows that an amount of Rs.4,02,649/- is still due to be paid to the appellant, calculated on the basis of the order by the National Commission as modified by this Court.

The learned counsel for the respondent submitted that this Court in Civil Appeal No. 3110/93, while granting interim order, directed the respondent to deposit a sum of Rs.8,20,575/- with interest at the rate of 12% per annum from 12.8.1987 within six weeks with the liberty to the appellant to withdraw the said amount; the respondent accordingly deposited a sum of Rs.13,91,995.44; since the respondent had already deposited the amount along with interest of 12% per annum, it was not liable to pay 6% interest on the principal amount of Rs.8,20,575/-. The learned counsel further urged that the National Commission having ordered for payment of interest at the rate of 18% per annum as per direction 2, payment of further interest at the rate of 18% per annum on the amount mentioned in directions 1 and 2 amounts to granting interest on interest.

We have considered the submissions of the learned counsel for the parties. It is clear from the order dated 23.9.1999 of this Court that the order of the National Commission stood confirmed except direction 3 given in the operative portion of the order of the National Commission. This Court on 30.10.2000 in the present case at the SLP stage, had passed the following order:-

Notice will be issued to show cause why the matter should not be disposed of on the basis of the Certificate issued by the Chartered Accountant of the petitioner, dated 24.8.2000.

The National Commission unfortunately has not gone into the details and did not discuss as to the rival contentions. We do not see any difficulty in accepting the contentions urged on behalf of the appellant that the order of the National Commission dated 15.4.1993 was confirmed by this Court except direction 3 and a correction of date with regard to payment of interest in direction 2 from 12.6.1987 to 12.8.1987. Hence the respondent was bound to satisfy the claim of the appellant including the interest as stated in item 4 of the order of the National Commission. It is not an interest over interest but it is an interest awarded on delayed payment. Merely because this Court, while granting an interim order, directed the respondent to deposit a sum of Rs.8,20,575/- with interest thereon at the rate of 12% per annum in Civil Appeal No.3110/93 pending disposal of the appeal, it cannot be said that liability of the appellant to pay interest at the rate of 18% per annum as per direction 4 of the order of the National Commission, ceased

Under these circumstances we find merit in the appeal. In the light of what is stated above, the respondent is liable to pay the remaining amount as indicated in the certificate issued by the Chartered Accountant in terms of

the order of the National Commission dated 15.4.1993 as modified by the order of this Court dated 23.9.1999 in Civil Appeal No. 3110/93. The respondent is entitled to deduct the amount already paid to the appellant. We make it clear that the respondent is not liable to pay interest from the date on which such amount has actually been received by the appellant in terms of the order of the National Commission as modified by this Court.

The appeal is allowed accordingly. There shall be no order as to costs.

JUDIS