

CASE NO.:
Appeal (civil) 399 of 2004

PETITIONER:
National Insurance Co. Ltd.

RESPONDENT:
Keshav Bahadur and Ors.

DATE OF JUDGMENT: 20/01/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Civil) No. 12305/2002)

ARIJIT PASAYAT, J.

Leave granted.

National Insurance Company Limited (hereinafter referred to as 'the insurer') questions legality of the judgment of a Division Bench of the Jharkhand High Court holding that the insurer has to pay the compensation of Rs.72,000/- awarded to the legal representatives of one Hasta Bahadur (hereinafter referred to as 'the deceased') who lost his life in a vehicular accident on 5.6.1987. The deceased was working as a Chowkidar of Hydel Project, Sikidri. A claim petition was filed by his sons under Section 110A of the Motor Vehicles Act 1939 (in short 'the Act'). The Motor Vehicle Accidents Tribunal (hereinafter referred to as 'the Tribunal') awarded compensation of Rs.72,000/- along with interest @ 12% per annum. The amount was directed to be paid within 60 days. It was further directed that in case of failure to pay within 60 days, the rate of interest would be 18%. The insurer questioned the legality of the direction that the whole amount of compensation was to be paid by the insurer; and the direction regarding default rate of interest. According to it, the liability was limited to Rs.50,000/- in terms of Section 95(2)(b)(i) of the Act; and there was no legal basis for the default rate. Though these points were specifically urged before the Tribunal, no definite finding was recorded. Similar was the situation so far as the High Court is concerned. Though it dealt with the question of interest and reduced the rate from 12%, as awarded by the Tribunal, to 9% per annum, no finding was recorded regarding legality of default rate.

Learned counsel for the appellant-insurer submitted that the liability statutorily fixed in respect of third party risk was at the relevant point of time Rs.50,000/-. With reference to copy of the policy of insurance, which was produced before the Tribunal and the High Court it is pointed out that a sum of Rs.240/- was paid as the third party insurance premium. The limits of liability were also indicated in the following terms:

"Limits of Liability:

(a) Limit of the amount of the Company's liability under Section II-I (i) in respect of any one accident.

Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

(b) Limit of Amount of the Company's Liability under Section II-I(ii) in respect of any one claim or series of claims arising out of the one event: Rs.50,000/-"

In the Schedule of premium under the heading B. "LIABILITY TO PUBLIC RISK" it was indicated to be Rs. 240/-. The stand in essence, therefore, is that when extra premium, if any, is not paid, for any enhanced liability, the statutorily fixed liability of Rs.50,000/- was the maximum that could have been awarded and nothing beyond it. It is also submitted that the High Court had directed payment of the amount within a particular time with the default stipulation of higher penal interest @ 18% p.a. It took note of the fact that pursuant to the order dated 23.2.1998 insurer deposited Rs.50,000/- on 6.3.1998. It was pointed out that neither the Tribunal nor the High Court could have stipulated any penal interest as was done. The High Court directed payment of the balance amount of compensation with interest and had stipulated that in case insurer does not pay the balance amount with interest at the rate indicated in the judgment penal interest @ 18% was to be paid. It was submitted that there is no provision for any penal interest. The only provision relating to interest is Section 110CC of the Act.

There is no response by the respondents in spite of the service of notice.

The liability of the insurer is limited as indicated in Section 95 of the Act. But it is open to the insured to make payment of additional higher premium and for insurer to accept higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, and proof of payment of additional premium the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability. A three-Judge Bench of this Court in *New India Assurance Company Limited v. Shanti Bai* (1995 (2) SCC 539) held as follows:

"(i) a comprehensive policy which has been issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third-party risk for an amount higher than the statutory limit,
(ii) that even though it is not permissible to use a vehicle unless it is covered at least under an "Act only" policy, it is not obligatory for the owner of a vehicle to get

it comprehensively insured, and (iii) that the limit of liability with regard to third-party risk does not become unlimited or higher than the statutory liability in the absence of specific agreement to make the insurer's liability unlimited or higher than the statutory liability."

In case insurer-appellant not taking any higher liability by accepting higher premium, the liability is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Act. Even if a vehicle is the subject matter of comprehensive insurance and a higher premium is paid on that score, limits of the liability with regard to third party risk does not become unlimited or higher beyond the statutory liability fixed. For this purpose, a specific agreement has to be arrived at between the insured and the insurer and separate premium has to be paid in respect of additional amount of liability undertaken by the insurer in that regard. This position was highlighted by this Court in *National Insurance Co. Ltd. v. Jugal Kishore* (1988 (1) SCC 626). In *New India Assurance Co. Ltd. v. C.M. Jaya and others* (2002 (2) SCC 278) a Constitution Bench approved the view taken in *Shanti Bai* (supra) and *Jugal Kishore* (supra). It was held that in case of insurer not taking any higher liability by accepting higher premium for payment of compensation to third party, the insurer would be liable to the extent limited under Section 95(2) of the Act and would not be liable to pay the entire amount of compensation awarded.

The inevitable conclusion on the factual backgrounds is that the liability of the insurer-appellant is limited to Rs.50,000/-. The residual question is whether there could be any stipulation of penal rate of interest as done by the Tribunal and affirmed by the High Court. So far as the higher rate of interest stipulation is concerned, it is to be noted that grant of interest under Section 110CC of the Act (corresponding to Section 171 of the Motor Vehicles Act, 1988) (in short the 'new Act') is discretionary. The purpose for award of interest is to put pressure on the relevant person not to delay in making the payment; and, to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of interest. In determining the quantum of interest awardable under the relevant Section, the Tribunal acting under Section 110 of the Act corresponding to Section 166 of the new Act can derive direct guidance from Section 34 of the Code of Civil Procedure, 1908 (in short the 'CPC'). In fact, 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. The provision is discretionary and is not and cannot be bound by rules. In the words of Lord Cairns, L.C. in *Julius v. Bishop of Oxford* (1880 (5) AC 214), "But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so". This classic observation has been quoted with approval by

this Court in several cases. (See Commissioner of Police v. Gordhandas Bhanji (AIR 1952 SC 16 and S.P. Gupta and Ors. v. President of India and Ors. (AIR 1982 SC 149). In Halsbury's Laws of England, 4th Edn., Vol.I, it has been observed:-

Para 28: Duty and discretion.

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"A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be a discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but a discretion how to act. Discretion may thus be coupled with duties".

Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colorable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (Per Lord Halsbury, L.C., in Sharp v. Wakefield, (1891) Appeal Cases 173). Also (See S.G. Jaisinghani v. Union of India and Ors. (AIR 1967 SC 1427)).

The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore where the legislature concedes discretion it also imposes a heavy responsibility.

"The discretion of a Judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said (Lord Camden, L.C.J., in Hindson and Kersey (1680) 8 How, St. Tr.57.)

If a certain latitude or liberty accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters which should regulate the exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (Per Willes J. in *Lee v Budeg Railway Co.*, (1871) LR 6 CP 576, and in *Morgan v. Morgan*, 1869, LR 1 P & M 644).

Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

The insurer cannot withhold the awarded amount indefinitely. In the circumstances, we direct that interest @ 9% per annum on the sum of Rs.50,000/- which is the liability of the insurer; from the date of claim till 6.3.1998, be paid within a period of three months from today, if not already paid or deposited before the Tribunal/High Court. The appeal is allowed to the extent indicated, without any order as to costs.