
Before Hemant Gupta, J.

BALWANT KAUR,—*Appellant/Plaintiff*

versus

L.I.C. OF INDIA,—*Respondent/Defendant*

R.S.A. No. 3494 of 1998

10th September, 2004

Interest Act, 1978—S. 3—Code of Civil Procedure, 1908—S. 34—Death of an insured due to accidental fall—L.I.C. denying benefit of 'double accident benefit' to claimant—Trial Court decreeing suit with interest—1st Appellate Court setting aside decree to the extent of awarding interest—Challenge thereto—In terms of S. 3(1) of 1978 Act interest is payable from the date on which the debt is payable by virtue of a written instrument till the date of institution of proceedings—Express stipulation in the policy prohibiting payment of interest—Appellant not entitled to interest for the period prior to filing of the suit under the substantive law—After institution of suit relationship of parties ceases to be governed by contract and comes to be governed by S. 34 C.P.C.—To award interest pendente lite and post decree is discretionary with the Court under Section 34 C.P.C. dehors the contract between the parties—Judgment and decree passed by 1st Appellate Court modified while holding the appellant entitled to interest for the period the suit remained pending before the Court as well as from the date of decree till realisation.

Held, that in terms of express prohibition of interest in terms of the policy, the plaintiff is not entitled to interest from the date of death of the policy holder till institution of the suit as pre-suit interest is a matter of substantive law. In substantive law, the plaintiff is not entitled to interest in terms of Section 3(3)(ii) of the Interest Act, 1978. Thus, the plaintiff is not entitled to interest for the period prior to the filing of the suit.

(Para 15)

Further held, that once the suit is filed, award of interest pendente lite and post-decree is discretionary with the Court and is governed by Section 34 of the Code dehors the contract between the parties. Therefore, the stipulation that no interest would be payable under the terms of the policy would cease to have effect after the filing

of the suit and the plaintiff would be entitled to interest in terms of Section 34 of the Code.

(Para 16)

Saíl Sagar, Advocate, *for the appellant.*

B. R. Mahajan, Advocate, *for the respondent.*

JUDGMENT

HEMANT GUPTA, J,

(1) Baldev Singh, husband of the plaintiff, has taken a life insurance policy carrying double accident benefit for a sum of Rs. 65,000. Baldev Singh died on 26th October, 1986 when he suffered accidental fall from the stair-case in the morning of 13th October, 1986. The amount of the insurance policy was paid by the Insurance Corporation. However, the benefit of double accident benefit was denied. Therefore, the plaintiff filed a suit for recovery of Rs. 65,000 together with interest at the rate of 18% per annum with effect from 26th October, 1986. The learned trial Court decreed the suit along with interest at the rate of 12% per annum from 26th October, 1986 and at the rate of 6% per annum from the date of institution of the suit till date of recovery and at the same rate thereafter till realisation.

(2) However, the learned first Appellate Court dismissed the appeal in respect of double accident benefit but set aside the decree to the extent of interest on the ground that in terms of the contract between the parties, the interest is not payable, therefore, the plaintiff is not entitled to any interest.

(3) The dispute in the present appeal is only whether the plaintiff is entitled to interest from the date of filing of the suit till realisation even though in terms of the stipulation of the policy, there is prohibition of payment of interest.

(4) The following substantial questions of law arise for consideration by this Court :—

- (1) Whether pre-suit interest can be awarded to the plaintiff even though there is a prohibition of payment of interest in terms of the policy ?
- (2) Whether the plaintiff is entitled to interest after the filing of the suit and future interest from the date of decree ?

(5) Learned counsel for the appellant argued that the plaintiff is entitled to interest on the amount which is found payable by the Civil Court as the plaintiff has been deprived of the user of the money. Such deprivation is required to be compensated by way of interest as rightful claim of the appellant has been found to be wrongly withheld by the civil Court. Alternatively, the learned counsel for the appellant has vehemently argued that payment of interest in a civil litigation is for three stages, firstly, pre-suit stage ; secondly, *pendente lite* interest; and, thirdly, future interest after the date of decree. It was contended that pre-suit interest is a matter of substantive law whereas interest *pendente lite* and future interest is a matter of procedure governed by Section 34 of the Code of Civil Procedure. It is, thus, contended that in view of the prohibition contained in the policy, the plaintiff may not be entitled to interest for a pre-suit stage but would be entitled to interest for the period the suit remained pending and till such date the amount is paid. Reliance was placed upon judgments of the Supreme Court in the cases of **Vithal Dass versus Rup Chand and others (1)**, **Life Insurance Corporation of India and another versus Gangadhar Vishwanath Ranade (dead) by LRs., (2)**, **Secretary, Irrigation Department, Government of Orissa and others versus Raghunath Mohapatra, (3)** ; **Central Bank of India versus Ravindra and others (4)**, and Single Bench judgment of this Court reported as **Union of India versus Hindustan Lever Limited and others, (5)**. On the other hand, learned counsel for respondents has referred to Section 3(3)(a)(ii) of the Interest Act, 1978 (hereinafter to be referred as "the Act") to contend that since the payment of interest is barred by an express agreement, the Court cannot grant interest in terms of Section 3(1) of the Act. He also relied upon the decision of Delhi High Court in the case of **Smt. Shanta Trivedi versus Life Insurance Corporation of India, (6)** as well as decision of the Single Bench of this Court reported as **Life Insurance Corporation of India versus Sulochana Devi, (7)**.

- (1) AIR 1967 S.C. 188
- (2) AIR 1990 S.C. 185
- (3) AIR 1992 S.C. 732
- (4) AIR 2001 S.C. 3095
- (5) AIR 1975 Pb. & Hy. 259
- (6) AIR 1988 Delhi 39
- (7) 1993 (2) Recent Revenue Reports 258

(6) The relevant provisions of Section 3 of the Act reads as under :—

“3. Power of court to allow interest :—(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period that is to say,—

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings :

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings :

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) xx xx xx xx

(3) Nothing in this section,—

(a) shall apply in relation to—

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement ; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement :

(b) and (c) xx xx xx xx ”

“5. Section 34 of the Code of Civil Procedure, 1908 to apply—Nothing in this Act shall affect the provisions of Section 34 of the Code of Civil Procedure, 1908.”

Code of Civil Procedure, 1908

Section 34. Interest.—(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest 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 nationalised banks in relation to commercial transactions.

Explanation I and II xx

(2) xx xx xx xx xx ”

(7) A perusal of the provisions of Section 3(1) of the Act shows that the Court in its discretion and within the parameters laid down under sub-section (1) of Section 3 of the Act grant interest if the proceedings relate to the debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the suit or if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim from the date of notice to the date of institution of the proceedings. In terms of sub-section (1) of Section 3 of the Act, interest is payable from the date on which the debt is payable by virtue of a written instrument till the date of institution of the proceedings. Thus, it is apparent that under sub-section (1) of Section 3 of the Act, the interest

contemplated is for a pre-suit stage. Section 5 of the Act clarifies the scope of the Interest Act when it is stipulated that the provisions of the Interest Act shall not affect the provisions of Section 34 of the Code of Civil Procedure, 1908.

(8) Section 34 of the Code of Civil Procedure, 1908 (hereinafter to be referred as "the Code") deals with the grant of interest at such rate as the Court deems reasonable to be paid (i) on the principal sum adjudged from the date of the suit to the date of decree ; (ii) in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit ; and (iii) with further interest at such rate not exceeding six per cent per annum on such principal sum from the date of decree to the date of payment with a proviso 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.

(9) Para No. 108 of Halsbury's Laws of England, Volume 32 (Fourth Edition) reads as under :—

"108. When interest is payable at common law.—At common law interest is payable (1) where there is an express agreement to pay interest ; (2) where an agreement to pay interest can be implied from the course of dealing between the parties or from the nature of the transaction or a custom or usage of the trade or profession concerned ; (3) in certain cases by way of damages for breach of a contract (other than a contract merely to pay money) where the contract, if performed, would to the knowledge of the parties have entitled the plaintiff to receive interest.

Except in the cases mentioned, debts do not carry interest at common law."

(10) In *Vithal Dass's case (supra)*, it was found that interest may be awarded for the period prior to the date of the institution of the suit if there is an agreement for the payment of interest at fixed rate or if interest is payable by the usage of trade having the force of law, or under the provisions of any substantive law. It was held as under :—

"It is well settled that interest may be awarded for the period prior to the date of the institution of the suit if there is an

agreement for the payment of interest at fixed rate or if interest is payable by the usage of trade having the force of law, or under the provisions of any substantive law as for instance S. 80 of Negotiable Instruments Act or S. 23 of the Trusts Act....”

(11) In **G.C. Roy's case** (*supra*), Constitution Bench of Supreme Court has dealt with the principles of grant of interest where the agreement is silent as to award of interest. The following principles were laid down :—

- (i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation. call it by any name. It may be called interest. compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of S. 34 C.P.C. and there is no reason or principle to hold otherwise in the case of arbitrator.
- (ii) xx xx xx
- (iii) xx xx xx
- (iv) xx xx xx
- (v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference priod). For doing complete justice between the parties, such power has always been inferred.

(12) Still further, provisions of Section 34 of the Code came to be interpreted by the Constitution Bench of Supreme Court in **Central Bank of India's case** (*supra*). The Court held to the following effect :—

“Mulla on the Code of Civil Procedure (1995 Edition) sets out three divisions of interest as dealt in Section 34 of C.P.C. 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 the rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post decree or future interest. Interest for the period anterior to institution of suit is not a matter of procedure : interest pendente lite is not a matter of substantive law.....”

(13) Still further, it has been held that pre-suit interest can be sub-divided into two sub-heads ; (1) Where there is stipulation for the payment of interest at a fixed rate ; and (ii) where there is no such stipulation. If there is a stipulation for the rate of interest, the Court must allow that rate up to the date of the suit subject to three exceptions, firstly, any provision of law applicable to money lending transaction, or usury laws or any other debt law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered into between the parties ; (ii) if the rate is penal, the Court must award at such rate as it deems reasonable ; and (iii) if the rate is not penal, the Court may reduce if the interest is excessive and the transaction was substantially unfair. However, if there is no express stipulation for payment of interest, the plaintiff is not entitled to interest except on proof of mercantile usage, statutory right of interest, or an implied agreement. In the present case, there is an express agreement of non payment of interest. Therefore, the plaintiff is not entitled to pre-suit interest under the substantive law as contained in Interest Act, 1978. In the aforesaid judgment it has been further held that interest from the date of the suit to date decree is in the discretion of the Court. Similarly, interest from the date of decree to the date of payment or any other earlier date is again in the discretion of the Court to award or not to award or also the rate at which to award. Still further, it has been held that once a suit is filed in the Court, so far as Section 34 of the Code is concerned, the relationship of the parties ceases to be governed by contract between the parties and comes to be governed by Section 34 of the Code. It was held to the following effect :—

“46. True it is that once a suit is filed in the Court, so far as Section 34 of the Civil Procedure Code is concerned, the

relationship of parties ceases to be governed by contract between the parties and comes to be governed by Section 34 of the Civil Procedure Code.”

(14) The Supreme Court concluded in one of the principles laid down in the aforesaid judgment to the following effect :—

“Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the C.P.C. dehors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.”

(15) In view of the judgments referred to above, it can be safely concluded that in terms of express prohibition of interest in terms of the policy, the plaintiff is not entitled to interest from the date of death of the policy holder till institution of the suit as pre-suit interest is a matter of substantive law. In substantive law, the plaintiff is not entitled to interest in terms of Section 3(3)(ii) of the Interest Act, 1978. Thus, in respect of first substantive question of law it is held that the plaintiff is not entitled to interest for the period prior to the filing of the suit.

(16) However, once the suit is filed, award of interest pendente lite and post-decree is discretionary with the Court and is governed by Section 34 of the Code dehors the contract between the parties. Therefore, the stipulation that no interest would be payable under the terms of the policy would cease to have effect after the filing of the suit and the plaintiff would be entitled to interest in terms of Section 34 of the Code.

(17) It is needless to say that the rights of the parties are adjudicated with reference to the date on which lis is commenced. Therefore, to compensate the delay in final adjudication, the Court is empowered to grant interest in terms of Section 34 of the Code for

the period has remained pending before the Court and for the period after the decree to enable the judgment debtor to make payment. Thus, the plaintiff is required to be compensated for the period spent in litigation as well.

(18) Single Bench judgment of this Court in **Hindustan Lever Limited's case** (*supra*) is to the same effect wherein interest was claimed on damages on account of death in a railway accident. It was held to the following effect :—

“There can be three periods for which in the case of a decree for payment of money, interest may be allowed. The first period is the one which is prior to the date of the suit. The payment of interest for that period is a matter of substantive law and contractual liability and is outside the scope of Section 34 Civil Procedure Code. According to Ruttanji Ranji's case, AIR 1938 PC 67 (*supra*) and **Vithal Dass versus Rup Chand**, AIR 1967 SC 188, interest can be awarded for that period (1) when there is an agreement for payment of the same, or (2) when it is payable by the usage of trade having the force of law, or (3) when the payment of the same is contemplated by the provision of any substantive law, or (4) under the Interest Act. It may also sometimes be awarded under the rule of equity. The second period is the one which intervenes the date of suit and the date of decree. The Court granting the money decree has discretion to allow interest *pendente lite* i.e. for the second period up to the limit of contractual rate. The third period is from the date of decree to the date of payment. For the said period, the Court granting the decree has discretion to allow interest, commonly known as future interest, on the amount adjudged, subject to the limit of 6 per cent, per annum, as it deems reasonable. Section 34, Civil Procedure Code, provides that the Court may, while awarding decree for payment of money, direct the payment of interest at such rate, as it deems reasonable, to be paid on the principal amount for any period prior to the institution of the suit, with future interest on such principal sum at a rate not exceeding 6 per cent per annum....”

(19) The principles laid down in the said judgment are the one which have been culled down by the Supreme Court in the later judgments.

(20) In **Smt. Shanta Trivedi's case** (*supra*), relied upon by learned counsel for the respondents, interest has been declined in view of the provisions of Section 3(3)(ii) of the Interest Act, 1978. However, no argument has been raised in the said case that the claim of interest after the filing of the suit would be governed by the provisions of Section 34 of the Code and not by contract. Therefore, to that extent, I am unable to subscribe to the view that the plaintiff is not entitled to interest after the filing of suit as well. The Court has not dealt with the argument now raised by the appellant that she would be entitled to interest under section 34 of the Code. In **Sulochani Devi's case** (*supra*), learned counsel for the plaintiff has forgone that claim of interest and, therefore, the said judgment is not applicable to the facts of the present case.

(21) In view of the above, the first substantial question of law is answered to the effect that the plaintiff is not entitled to interest for pre-suit period in view of the express stipulation in the policy. However, the plaintiff is entitled to interest for the period the suit remained pending before the Court as well as from the date of decree till realisation. Since the learned trial Court has exercised discretion in granting interest at the rate of 6 per cent per annum for the pendente lite period as well as for the period after the grant of decree, I do not find any reason to interfere with the said discretion exercised by the trial Court.

(22) Consequently, the present appeal is allowed and the judgment and decree passed by the learned first Appellate Court is modified to the effect that the plaintiff shall be entitled to interest at the rate of 6% per annum for the period from the date of filing of the suit till the date of realisation.

R.N.R.