

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 241/2000

Judgment delivered on: October 30, 2007

United India Insurance Co. Ltd. Appellant
Through: Mr. V.P. Malhotra, Adv.

versus

Smt. Bimla Pant & Ors.
Respondents
Through: Mr. M.L. Pahwa, Adv. for
respondents No. 1 to 3.
Mr. Pramod Gupta, Adv. for
respondent No. 6.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

The present appeal was preferred by the insurance company i.e. appellant herein challenging the impugned judgment on the ground that the appellant has the limited liability under Section

95(2) of the unamended Motor Vehicles Act prior to 1st July, 1989.

The accident in the present case had occurred on 20th March, 1989 and on the relevant date the old Motor Vehicles Act i.e. Motor Vehicles Act of 1939 was in force. The appellant is liable to pay only a sum of Rs. 50,000/- towards the compensation of respondents No. 1 and 2. Respondent No. 5 is the driver of the offending vehicle and respondent No. 6 is the owner of the offending vehicle. Respondents No. 3 and 4 were directed to be deleted vide order dated 12.11.1999 by the order of the Tribunal itself and, therefore, they have been wrongly impleaded in the present appeal. Mr. Pramod Gupta counsel appearing for respondents No. 6 admits the said legal position. He, however, submits that respondent No. 6 have been burdened with the heavy compensation amount. He, therefore, submits that this Court may grant some concession on the rate of interest, which is otherwise quite exorbitant. The Tribunal has awarded 12% interest on the Award amount from the date of the filing of the petition till its realization. In part satisfaction of the said award amount the appellant insurance company had deposited an amount of Rs. 1,92,546/- on 30th March, 2001 and Rs. 2,82,050/- on 24th September, 2005. The said amount of Rs. 1,92,546/- was

released in favour of the claimants/respondent Nos. 1 and 2, while subsequent amount of Rs. 2,82,050/- is lying deposited in the fixed deposit with the Tribunal. Besides the above amount the appellant had also deposited Rs. 25,000/- towards no fault liability compensation, which was also withdrawn by the claimants. Perusal of the record of this appeal shows that this appeal was dismissed in default vide order dated 7th October, 2004 and the same was restored only vide orders dated 14th November, 2005 i.e. almost after a lapse of about more than a year. In the meantime, the appellant had to deposit the said amount of Rs. 2,82,050/- pursuant to the execution of the decree by the claimants.

The compensation case before the Tribunal was filed on 22.4.1989, which resulted into passing of an Award by the Tribunal on 1st February, 2000 i.e. after a long gap of about 11 years. The present appeal by the insurance company was preferred in May, 2001 and this has also taken more than 6 years in finally disposing of the appeal. In the meanwhile the appeal also remained dismissed for non-prosecution on account of the lapse of the appellant. Since the total time consumed for finally disposing of the matter is about more than 17 years, therefore, I

feel that respondent No.6 cannot be burdened with the rate of interest of 12% as awarded by the Tribunal on the compensation amount at least from the date of filing of the appeal till date.

In the above circumstances, the rate of interest of 12% on the principal amount is reduced from 12% to 6%, which shall be payable by respondent No. 6 from the date of the filing of the appeal till its final payment. As per the calculation made by respondent No. 6, respondent No. 6 has a liability to pay a sum of Rs. 2,59,600/- to the claimants/respondents No. 1 and 2 and a sum of Rs. 1,32,500/- to the appellant insurance company and thus, in all, the total liability of respondent No.6 would be Rs. 3,92,100/-. Basis of this calculation is that respondent No. 6 has calculated 12% interest on Rs. 1,57,000/- after deducting the liability of the insurance company to the tune of Rs. 50,000/- from the award amount of Rs. 2,07,240/- and interest has been calculated from 1989 to 2000 i.e. till the date of the passing of the Award. Interest @ 6% has been calculated on the last principal balance amount of Rs. 1,57,000/- firstly with effect from 2000 to 2001 for one year, which comes to Rs. 9420/- and then from 2001 to 2005 on a sum of Rs. 78,500/- because of the 50% awarded amount received by the respondents. This interest for a period of

about 4 years comes out to Rs. 18,440/- and in this manner the total liability of respondent No. 6 comes to Rs.3,92,100/-. These calculations have been shown to the counsel appearing for the appellant as well as to the counsel appearing for respondents No. 1 and 2. Although agreeing with the calculation as carried out by respondent No. 6 the appellant submits that the insurance company is entitled to the interest amount of Rs. 1,32,500/- w.e.f. 3rd April, 2001 till date, while counsel appearing for respondents/claimants states that respondents should not unnecessarily suffer on account of reduction of the interest rate for no fault of their. Counsel further says that interest @ 6% should be calculated on the over due amount of Rs. 78,500/- till its final payment. Counsel for the appellant also states that the appellant would be entitled to get release of the FDR of Rs. 2,82,050/- with up to date interest accrued thereon.

After having heard learned counsel for the parties, I feel that the interest of justice will be met if the interest rate from 12% from the date of the filing of the present appeal is reduced to 6% on the remaining principal sum and as per the calculation made by respondent No. 6 the total liability of respondent No. 6 would come to Rs. 3,92,100/-. Long delay in the disposal of the appeal

and the main case has taken place and almost 17 years have been consumed in reaching at this stage for finally disposing of the matter. Even the appeal remained dismissed for a period of one year. For this enormous delay, all the parties must share equal burden and, therefore, the claims raised by the appellant towards the grant of interest on the said amount of Rs. 1,32,500/- is rejected and similarly the plea of the counsel for the respondents claiming interest of @ 12% from the date of the filing of the appeal till its realization as well as the claim of 6% interest from 2005 till its realization is also rejected. I feel that after balancing the equities amongst these parties the amount of FDR, which was deposited by the appellant i.e. sum of Rs. 2,82,050/- needs to be released in favour of the appellant along with the entire interest accrued thereon. Besides the said sum a sum of Rs. 1,32,500/- shall be paid by respondent No. 6 to the appellant insurance company within a period of four weeks and a sum of Rs. 2,59,600/- shall be paid by respondent No. 6 to respondents No. 1 and 2 within a period of four weeks. Let the amount of Rs. 2,59,600/- be paid in equal half share in favour of respondents Nos. 1 and 2. On the failure of respondent No. 6 to pay the said amount within a period of four weeks, respondent No. 6 shall be

liable to pay the said amount with interest @ 18% per annum from the date expiring after a period of four weeks. Counsel for respondents No. 1 and 2 have agreed to accept the said amount so as to put the litigation at rest. Similarly it is hoped that the insurance company shall also give finality to the present lis.

With these directions, the appeal stands disposed of.

Dasti.

October 30, 2007
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KAILASH GAMBHIR, J.