



GAHC010223672017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7117/2017

NIZARA GOSWAMI
W/O. LT. TUTUL SARMA, R/O. KHANAGURI, P.O. SOOTEA, P.S. SOOTEA,
DIST. SONITPUR ASSAM.

VERSUS

UNITED INDIA INSURANCE CO. LTD. and 2 ORS.
HAVING ITS REGISTERED OFFICE AT 24 WHITES ROAD, CHENNAI-600014.

2:UNITED INDIA INSURANCE COMPANY LTD.

REP. BY CHIEF REGIONAL MANAGER
G.S. ROAD
GUWAHATI
PIN-781005.

3:THE BRANCH MANAGER
UNITED INDIA INSURANCE CO. LTD.

TEZPUR BRANCH
TEZPUR
PIN

For the Petitioner(s) : Mr. R. K. Talukdar, Advocate
: Mr. H. J. Tamuli, Advocate

For the Respondent(s) : Mr. Shisir Dutta, Sr. Advocate
: Mr. S. Dutta, Advocate



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 11-08-2023

1. The instant writ petition has been filed seeking a direction that the order dated 12.11.2016 passed in MAC Appeal No.50/2015 by this Court be complied with and also seeking a direction upon the Respondents i.e. the United India Insurance Company Ltd. and its officials to pay the balance amount to the Petitioner.

2. It reveals from the records that an award was passed on 20.08.2013 in MAC Case No.230/2009 by the Member, Motor Accident Claims Tribunal, Sonitpur, Tezpur whereby an amount of Rs.19,27,548/- was arrived at as the just and reasonable compensation and it was further directed that the said amount of Rs.19,27,548/- would carry an interest @ 9% per annum from the date of institution of the case i.e. on 07.07.2009 till realization. Further to that, an amount of Rs.1,000/- was also imposed as cost.

3. It appears that the Respondent No.1 filed an appeal before this Court being MAC Appeal No.50/2015 i.e. almost after 2 (two) years from the passing of the said award. The said appeal was admitted and there was a direction to deposit 50% of the said awarded compensation. In terms with the said directions, the Respondents herein who were the Appellants in MAC Appeal No.50/2015 deposited an amount of Rs.12,00,000/-. The matter was placed before the Lok Adalat held on 12.11.2016. In the said Lok Adalat the following order was passed which is reproduced hereinunder:

“Mr. A.N. Das, Manager, United India Insurance Co. Ltd., Guwahati Regional

Office is present. So also, Smt. Nizara Goswami, respondent No.1 /claimant.

The Insurance Company has filed this appeal challenging the legality and validity of the judgment and award dated 20.08.2013 passed by the Member, Motor Accident Claims Tribunal, Sonitpur in MAC Case No.230/2009 awarding compensation of Rs.19,27,548.00 with interest @ 9% per annum from the date of institution of the case.

Mr. Das, the Manager, submits that an amount of Rs.12,00,000/(twelve lakhs) has been paid to the claimant till date.

On proper instruction, he submits that in the spirit of the Lok Adalat, Insurance Company is willing to withdraw the appeal. However, he submits that the amount already paid by the Insurance Company should be deducted while computing the interest amount.

In view of the fair submission made, this appeal is disposed of on withdrawal on the following terms. The balance amount shall be deposited by the Insurance Company in the Registry of this Court within 30 days from today whereafter claimant would be entitled to collect the said amount on proper identification. It is made clear that the amount already paid to the claimant would not be taken into consideration while computing the interest amount.

Appeal is disposed of."

4. Pursuant to the said order, an amount of Rs.11,50,000/- was paid to the Claimant/Petitioner in the month of March, 2017 which as per the Respondents is the full and final settlement pursuant to the order dated 12.11.2016. It was the case of the Petitioner herein that the Petitioner is entitled to a further amount of Rs.8,12,100/- which was not paid in terms with the order dated 12.11.2016 and as such the Petitioner had represented before the Respondent No.2 vide the communications dated 05.06.2017 and 15.06.2017. As nothing



was done on behalf of the Respondents, the instant writ petition has been filed.

5. It appears from the records that this Court vide an order dated 20.11.2017 had issued notice making it returnable by 4 (four) weeks. In pursuance to the said notice, an affidavit-in-opposition was filed by the Respondent Nos. 1 and 2. In the said affidavit-in-opposition, it was mentioned that one Mr. A. N. Das, the Officer who represented the Insurance Company had submitted that the appeal may be settled provided the amount already paid to the Claimant of Rs.12,00,000/- would not be taken into consideration while computing the interest amount. In paragraph No.5, it was mentioned that the total awarded amount was Rs.19,27,548/- and after deducting 12,00,000/- the amount is Rs. 7,27,548/- and the total interest on Rs.7,27,548/- till 12.11.2016 was Rs.4,81,856/- and as such after deducting the required TDS, the amount was duly paid to the Petitioner which was Rs.11,13,033/-. This calculation can be seen from the Annexure-II from the said affidavit-in-opposition.

6. I have heard the learned counsels for the parties and have perused the materials on record. Taking into account the contesting stand so taken by the Petitioner as well as the Respondents, this Court deems it proper to take note of the order dated 12.11.2016 which has already been reproduced hereinabove. This order in the opinion of this Court has to be read with the judgment and award dated 20.08.2013 passed in MAC Case No.230/2009. As already stated hereinabove, the learned Tribunal has awarded an amount of Rs.19,27,548/- along with interest @ 9% per annum from the date of institution of the case i.e. on 07.07.2009 till realization. In addition to that, an

amount of Rs.1,000/- has been awarded as cost. It appears further from the records that on 27.02.2015, this Court directed the Respondents in Misc Case No.490/2015 arising out of MAC Appeal No.50/2015 to deposit 50% of the said amount and on the basis thereof, an amount of Rs.12,00,000/- was deposited on 23.04.2015.

7. This Court finds it relevant at this stage to take note of the total amount payable to the Petitioner as on 23.04.2015 as per the award dated 20.08.2013. The said amounts comes to Rs.19,27,548/- + 9% interest w.e.f. 07.07.2009 to 23.04.2015 i.e. 5 years 9 months 16 days or 2116 days. The interest amount as on 23.04.2015 is Rs.10,05,704/-. Therefore, the total amount as on 23.04.2015 was Rs.29,33,252/-. As an amount of Rs.12,00,000/- was duly deposited, the remaining balance amount comes to Rs.17,33,252/-.

8. Now, let this Court take note of how the calculation is to be made as to when there is a deposit so made in terms with an interim order. The Constitution Bench in the Case of **Gurpreet Singh Vs. Union of India** reported in **(2006) 8 SCC 457** had duly opined as to how the amount so paid pursuant to interim orders are required to be adjusted. This aspect of the matter can be seen from paragraph No.52 which is reproduced herein under:

“52. What is to happen when a part of the amount awarded by the Reference Court or by the appellate court is deposited pursuant to an interim order of the appellate court or of the further appellate court and the awardee is given the liberty to withdraw that amount? In such a case, the amount would be received by the decree-holder on the strength of the interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. In such a case, if the appeal is disposed of in his favour, the decree-holder would be entitled to appropriate

the amount already received by him pursuant to the interim order first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation by levying execution. But on the part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee. Of course, if while passing the interim order, the court has indicated as to how the deposited amount is to be appropriated, that direction will prevail and the appropriation could only be done on the basis of that direction."

9. From the above, it could be seen that the Constitution Bench had opined that when a part of an amount awarded by the Reference Court or by the Appellate Court is deposited pursuant to an interim order of the Appellate Court or the further Appellate Court and the awardee is given the liberty to withdraw the amount, in such a case the amount will be received by the decree holder/awardee on the strength of the interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. It was further observed that in such a case, if the appeal is disposed of in favour of the decree holder/awardee, he would be entitled to appropriate amount already received by him pursuant to the interim order first towards interest, then towards costs and then the balance towards the principal as on the date of withdrawal of the amount and claim interest on the balance amount of the enhanced compensation by levying execution. It was further observed that on the part appropriated towards the principal, interest would cease from the date on which the amount is received by the awardee. It was further observed that if while passing the interim order, the Court had indicated as to how the deposited amount is to be appropriated, that direction will prevail and the

appropriation could only be done on the basis of that direction.

10. In the instant case while disposing of the Misc Case No.490/2015 thereby directing the Respondents herein to deposit 50% of the amount vide order dated 27.02.2015, there was no direction as to how the amount was to be apportioned.

11. In the backdrop of the above, let this Court therefore take into consideration the directions so passed in the order dated 12.11.2016. It would be relevant to take note of that in the said order, this Court had duly taken into consideration that the Respondent Insurance Company herein i.e. the appellants in MAC Appeal No.50/2015 had submitted that they are willing to withdraw the appeal however stated that the amount already paid by the Insurance Company should be deducted while computing the interest amount and this Court therefore vide the order dated 12.11.2016 permitted the withdrawal with a direction to the Insurance Company to deposit the amount within 30 days from the date of the said order and further clarified that the amount already paid to the Claimant would not be taken into consideration while computing the interest amount meaning thereby, this Court vide the order dated 12.11.2016 while disposing of the appeal directed how the amount which was already deposited in pursuance to the interim order is required to be apportioned.

12. It is further relevant to take note of that after the payment of Rs.12,00,000/- on 23.04.2015, the balance amount so payable was Rs.17,33,252/- and to the said amount, an interest shall accrue @ 9% per annum was payable. At the time of withdrawal of the said appeal on 12.11.2016, the total amount which was payable to the Petitioner was



Rs.19,27,548/- + 9% interest w.e.f. 07.07.2009 to 12.11.2016 and in normal circumstances applying the law as laid down in the case of **Gurpreet Singh (supra)**, the calculation works out as under:

$$\begin{aligned} & \text{Rs.19,27,548} + 9\% \text{ for 2116 days i.e. from 07.07.2009 to 23.04.2015} \\ & = \text{Rs.19,27,548} + \text{Rs.10,05,704} \\ & = \text{Rs.29,33,252} \end{aligned}$$

Now apportioning Rs.12,00,000/- so paid on 23.04.2015 towards interest, then costs and then to the principal, the amount remains to be paid is Rs.17,33,252/-. The said amount is the Principal amount. On the said amount, 9% interest would be payable from 24.04.2015 to 01.03.2017 (the date when Rs.8,74,358/- was paid). Therefore, the total amount as on 1st March 2017 was Rs.20,22,586/- (principal Rs.17,33,252 + Rs.2,89,334).

Having paid the amount of Rs.8,74,358/- on 1st March 2017, the total amount payable as on 2nd March, 2017 is Rs.11,48,228/-.

Therefore, applying the ratio of **Gurpreet Singh (supra)**, the Petitioner would be further entitled to Rs.11,48,228/- along with interest @ 9% from 2nd March, 2017 to the date of realization of the entire amount.

13. Now, let this Court take into consideration as to whether there would be any change in the amount in view of the order dated 12.11.2016. It is relevant to note that as on 23.04.2015, the amount payable to the Petitioner in view of the award dated 20.08.2013 in MAC Case No.230/2009 was Rs.29,33,252/-. The amount of Rs.12,00,000/- was paid on 23.04.2015. In the order dated 12.11.2016, it was mentioned that the Insurance Company had submitted that

the amount of Rs.12,00,000/- so paid should be deducted while computing the interest. This Court observed that the amount already paid to the Claimant would not be taken into consideration while computing the interest amount. But interestingly, when the order dated 12.11.2016 was passed or for that matter when the amount of Rs.12,00,000/- was deposited, the amount payable to the Petitioner/Claimant as on 23.04.2015 was Rs.29,33,252/-. The Award was not modified or interfered with by the order dated 12.11.2016. Therefore the calculation works out taking into consideration the order dated 12.11.2016 as under:

Sl. No.	Details	Amount
(1)	Principal amount as per Award	Rs.19,27,548
(2)	Cost	Rs.1,000
(3)	Interest from 07.07.2009 to 23.04.2015 i.e. 2116 days @ 9% per annum	Rs.10,05,704
(4)	Interim amount paid on 23.04.2015 pursuant to the order of this Court dated 27.02.2015	Rs.12,00,000
(5)	Order dated 12.11.2016 directing no interest on the amount of Rs.12,00,000 so paid	Rs.19,27,548 – Rs.12,00,000 = Rs.7,27,548 (principal payable) + Rs.10,05,704 (Interest) + Rs.1,000 (Costs)
(6)	Amount paid on 01.03.2017 (no specific directions how to be apportioned in the order dated 12.11.2016 as regards the	Rs.8,74,358 Therefore the amount of Rs.8,74,358 has to be

	remaining amount)	deducted from the interest amount of Rs.10,05,704 (Rs.10,05,704 – Rs.8,74,358) = Rs.1,31,346
(7)	Interest on Rs.7,27,548 from 24.04.2015 to 01.03.2017 i.e. for 677 days @ 9% per annum	Rs.1,21,450 Therefore total payable as on 2 nd March, 2017 is Principal = Rs.7,27,548 Costs = Rs.1,000 Interest : Rs.1,31,346 + Rs.1,21,450 = Rs.2,52,796

Therefore, by applying the order dated 12.11.2016, the Petitioner is further entitled to an amount of Rs.7,27,548/- along with 9% interest w.e.f. 2nd March, 2017 till due payment before the Registry of this Court. Apart from the said, the Petitioner would be further entitled to Rs.2,52,796/- on account of interest and Rs.1,000/- towards costs.

14. In that view of the matter, the instant writ petition stands allowed thereby directing the Respondent Nos. 1, 2 and 3 to deposit the amount of Rs.7,27,548/- along with 9% interest w.e.f. 2nd March, 2017 till due payment before the Registry of this Court. Apart from the said, the Petitioner would be further entitled to Rs.2,52,796/- on account of interest and Rs.1,000/- towards cost. The said amounts are directed to be deposited within 60 days from the date of passing of this judgment.

15. The Petitioner shall be at liberty to file appropriate application before the Registry of this Court for release of the said amount. The Registry upon necessary verification and identification shall release the said amount so deposited to the Bank Account of the Petitioner.



16. With the above observations and directions, the instant petition stands allowed.

JUDGE

Comparing Assistant