

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 13031 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

NEW INDIA ASSURANCE CO. LIMITED....Petitioner(s)

Versus

BHOYABHAI HARIBHAI BHARVAD & 3....Respondent(s)

Appearance:

MR VIBHUTI NANAVATI, ADVOCATE for the Petitioner(s) No. 1

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 08/08/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This petition is filed by New India Assurance Company Ltd. challenging an order dated 18.06.2016 passed by the Motor Accident Claims Tribunal, Vadodara, below application Exh. 7 in MACP Execution Application No. 284 of 2015.
2. The petition arise in following background:

One Hakuben, wife of Bhoyabhai Haribhai Bharwad was travelling in a bus on 23.05.2008 when another bus, which was insured by the petitioner-insurance company, dashed against it from behind resulting into fatal injuries to passenger Hakuben. Her legal heirs i.e. her husband and children, therefore, filed Motor Accident Claim Petition No. 818 of 2008 claiming compensation of Rs. 9 lacs from the drivers, owners and insurers of the vehicles involved in the accident. The Claims Tribunal, Vadodara by a judgement and award dated 28.08.2015, awarded compensation of Rs. 4,01,000/- to the claimants with interest @ 9% per annum from the date of claim petition i.e. 17.06.2008 till actual payment.

3. The petitioner-insurance company was liable to satisfy such decree and, therefore, deposited a sum of Rs. 5,45,027/- with the Claims Tribunal on 14.10.2005. The petitioner has presented its computation of such amount payable to satisfy the award of the Claims Tribunal which reads as under:

Award		Rs. 4,01,000/-
(-) NFL deposit		Rs. 25,000/-
(-) NFL deposited by NIC		Rs. 25,000/-
Balance		Rs. 3,51,000/-
Interest @9% from 17.6.2008 to 23.09.2015 (87.20 months) i.e. 2,29,554/-		
Share of 1 st claimant	50%	Rs. 1,14,777/-
Share of 2 nd claimant	50%	Rs. 0,57,389/-
Share of 3 rd claimant	50%	Rs. 0,57,389/-
		Rs. 2,29,554/-
Cost		Rs. 10,383/-
Total Payable		Rs. 5,90,937/-
(-) TDS		
@ 20% (1 st claimant)		Rs. 22,955/-
@ 20% (2 nd & 3 rd claimants)		Rs. 22,955/-
		Rs. 45,910/-
Net Payable		Rs. 5,45,027/-

4. From such calculations, it can be seen that the petitioner-insurance company has deducted Rs. 45,910/- by way of tax at source and deposited the same with the Income Tax Department on or around 21.02.2016.
5. The claimants, however, disputed the amount deposited by the insurance company and filed Execution Application No. 284 of 2015 before the Claims Tribunal complaining that the insurance company had short deposit Rs. 45,910/- and, with interest, it would come to Rs. 46,630/-. On such application, the Tribunal passed impugned order dated 18.06.2016 and has issued distress attachment warrant against the petitioner- insurance company, upon which, such insurance company has filed this petition and challenged the said order of Claims Tribunal.

6. It is undisputed that the decision of Division Bench of this Court in case of **Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd.** reported in **2007 (2) GLR 291** governed the situation of requirement of deducting tax at source in connection with payment of compensation and interest in motor accident claims cases. The Division Bench had interpreted the provisions of Section 194A of the Income Tax Act and come to the conclusion that the amount of interest accrued each year would have to be apportioned among the claimants on year to year basis and, if the interest payable to any claimant for any financial year exceeds Rs. 50,000/-, only then the Tribunal would permit the insurance company or the owners to pay or allow to be deducted tax at source to the Income Tax Department in respect of that particular claimant for that year.

7. The sole ground raised by the petitioner-insurance company in this petition for deducting tax at source despite the judgement of this Court in case of Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd is that by virtue of amendment in Section 194A of the Income Tax Act ['the Act' for short] by Finance Act 2015 w.e.f. 1.6.2015 there had arisen a requirement of deducting tax at source on crediting of the interest on the compensation awarded by the Claims Tribunal. We may examine this contention more minutely. Before doing so, we may reproduce the directions of the High Court in case of Smt. Hansagauri Prafulchandra Ladhani and

ors vs. The Oriental Insurance Company Ltd (supra):

"14. It is necessary to obviate such a situation in future for other claimants who may be awarded compensation with interest thereon, and the amount of interest being deposited exceeds Rs.50,000/-, but who may not be liable to have any tax deducted at source as per the interpretation placed by us on the provisions of Section 194A of the Act.

We, therefore, direct that -

I. The Insurance Companies or the owners of the motor vehicles depositing the amounts in compliance with the awards of the Motor Accident Claim Tribunals shall -

(a) first spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit.

(b) thereafter, if the interest for any particular financial year exceeds Rs.50,000/-, separately deposit before the Tribunal the amount liable to be deducted at source under the provisions of Section 194A(3)(ix) of the Incometax Act, 1961. Such amount shall not, however, straightaway, be paid over to the Income-tax department.

(c) produce before the Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of claim petition till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/- and also request the Tribunal to treat the amount as a separate deposit.

II. (i) The Tribunal shall take into account the principles laid down in this judgment and ensure that the amount of interest accrued each year is apportioned amongst the claimants on year to year basis.

(ii) If the interest payable to any claimant for any particular financial year exceeds Rs.50,000/-, the Tribunal shall permit the Insurance Companies/owners to pay over the amount liable to

be deducted at source under Section 193(3)(ix) of the Income-tax Department in respect of that particular claimant for that particular year, without prejudice to the claimant's case that he is not liable to pay any income-tax for that year.

(iii) for the financial year/s for which the interest payable to the concerned claimant does not exceed Rs.50,000/-, the Tribunal may permit such claimant to withdraw the amount deposited as per direction I(b) without producing the certificate from the concerned income-tax authority that there is no income-tax liability on the interest which has accrued on the compensation awarded by the Tribunal.

(iv) It is clarified that the amount other than the amount liable to be deducted at source under Section 194A(3)(ix) shall be invested/disbursed by the Tribunal.

III. When the claimants make applications/ representations before the authority under the Income-tax Act, 1961 for refund of the amount deducted under the provisions of Section 194A(3) (ix) of the Act, the concerned authority shall decide such applications/representations within six months from the date of receipt of the *applications/representations*.”

8. This decision was rendered in the background of the provisions contained in Section 194A of the Act which pertains to interest other than interest on securities. Sub section (1) of Section 194A provides that any person not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment

thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force. Thus, the requirement of deducting tax at source was attached at the stage of credit of such income to the account of the payee or at the time of payment through cash or cheque, a bank draft whichever is earlier.

9. Sub section (3) of Section 194A, however, includes those cases which would be excluded from the purview of sub section (1). Relevant portion of sub section (3) as it stood prior to 01.06.2015 amendment read as under:

“194A. (3) The provisions of sub-section (1) shall not apply-

(ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees;”

10. The Gujarat High Court in case of Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd (supra) had occasion to interpret this provision. W.e.f. 01.06.2015, however, this Clause (ix) of sub section (3) of Section 194A has been omitted and is replaced by Clauses (ix) and (ixa) which read as under:

“(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(ixa) to such income paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees.”

11. Under Clause (ix) to sub section (3) of Section 194A of the Act, as it originally stood, requirement of deducting tax at source under sub section (1) would not apply in a case where any income is credited or paid by way of interest on compensation amount awarded by Motor Accident Claims Tribunal where the amount of such income or, the aggregate amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees. This provision of Clause (ix) is now divide into two parts and is replaced by Clauses (ix) and (ixa). Clause (ix), in the present form, refers to such income credited by way of interest on the compensation amount awarded by the Claims Tribunal. The case of crediting of interest on compensation therefore, would fall in Clause (ix) as it stands currently. Under Clause (ixa) would fall, any payment of interest on compensation awarded by the Claims Tribunal where the amount of such income or the aggregate paid during the financial year does not exceed fifty thousand rupees.

12. It would, therefore, be wholly incorrect to read the current provision of sub section (3) of Section 194A to argue that the cases of income credited by way of interest on compensation awarded by the Claims Tribunal is no longer part of sub section (3) for exclusion from purview of sub section (1) of Section 194A. In other words, worded slightly differently. The case of credit of interest on compensation awarded by the Claims Tribunal continues to find place in the exclusion clause contained in sub section (3) of Section 194A. In fact, it would prima facie appear that the ceiling of Rs. 50,000/- per annum for such exclusion is now done away with in case of crediting of interest on compensation awarded by the Claims Tribunal while retaining such limit in cases of payment of interest on such compensation. However, we need not thresh out this last part of the issue since admittedly, in the present case, for none of the years under consideration, the interest income exceeded Rs. 50,000/-. In fact, this Court in case of Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd (supra) provided for further splitting up of this ceiling of Rs. 50,000/- per claimant basis. Looked from any angle, the insurance company was not justified in deducting tax at source while depositing the compensation in favour of the claimants. It therefore, cannot avoid liability of depositing such amount with the Claims Tribunal. The Claims Tribunal had committed no error in insisting on the insurance company in making good the shortfall.

13. At this stage, learned counsel for the petitioner drew our attention to the order dated 05.03.2012 passed by this Court in Civil Application No. 2592 of 2012, in which, the insurance company had deposited with the Income Tax Department a sum of Rs. 7, 91, 971/- by way of tax on compensation of Rs. 34,39,070/- awarded by the Claims Tribunal. This Court allowed the claimants to seek refund of such amount from the Income Tax department and permitted the insurance company to receive it back from the claimants as and when such refund would be made by the Income Tax department. However, in the present case, we are not inclined to accept such a formula. Firstly, the amount in question is not very large. Secondly, in order to provide for such formula, we would have to call upon the claimants to appear before us, a luxury which poor litigants can ill-afford. Thirdly, the insurance company should have properly advised itself before effecting tax at source on the ground that the judgement of this Court in case of Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd (supra) was no longer good law in view of the statutory amendments. Not having done that the only course left open to the insurance company would be to approach the Income Tax department for refund, as may be advised.

14. With these observations, the petition is dismissed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

Jyoti

