

ARUN KUMAR v SUN INSURANCE CO LTD (ABU0006 of 11)

COURT OF APPEAL — CIVIL JURISDICTION

5 CALANCHINI AP, CHITRASIRI and HETTIARACHCHI JJA

22 February, 9 March 2012

10 **Practice and procedure — interest — interest on judgment in favour of appellant —
statutory right to interest — rate of interest — period for calculation of interest —
Law Reform (Miscellaneous Provisions) (Death and Interest) Act ss 3, 4.**

15 The appellant had sought a declaration that the respondent was liable to indemnify the
appellant. Judgment was entered in favour of the appellant, directing the respondent to pay
the appellant \$100,000. The High Court judge omitted to award four percent of interest
claimed on that sum. The only issue for the Court was whether the appellant is entitled to
obtain interest at the rate of four percent on the sum of \$100,000.

Held –

20 (1) The judge should have addressed his mind as to the interest component. It is proper
and correct to exercise the discretion of the court in favour of the appellant in terms of s 3
of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act, enabling the
appellant to obtain interest on the judgment.

25 (2) The rate of four percent interest, which had been sought by the appellant, should be
the rate of interest applied. The interest so payable should be computed up to the date the
awarded sum was paid in satisfaction of the judgment.

Appeal allowed.

Case referred to*Riches v Westminster Bank Ltd* [1943] 2 All ER 725, cited.30 *H A Shah* for the Appellant.*A Sudhakar* for the Respondent.

35 **[1] Calachini AP.** I agree with the judgment and proposed orders of Kankani
Chitrasiri JA.

40 **[2] Chitrasiri JA.** This is an appeal filed by the Appellant, namely Arun
Kumar who is the Plaintiff in the original case bearing No ABU 0006 of 2006,
instituted in the High Court at Lautoka seeking a declaration that the respondent
is liable to indemnify the plaintiff under Workers Compensation policy No
18425. In that case filed in the High Court, judgment was entered in favour of the
appellant directing the respondent, Sun Insurance Company Limited to pay the
appellant \$100,000/-. However, the learned High Court Judge, Justice Sosefo
Inoke, in his judgment had omitted to award, 4% of interest claimed, on the said
adjudged sum of \$100,000/. The Appellant, in this appeal sought to canvass the
45 said non-awarding of interest claimed on the judgment delivered in favour of him

[3] At this stage, it is also necessary to note that no party has made any
application to vary or to set aside the decisions as to the decreed amount of
\$100,000 and the costs of \$1,500 payable to the Appellant by the respondent.
Hence the only issue in this instance is to ascertain whether the Appellant is
50 entitled to obtain interest at the rate of 4% on the aforesaid adjudged sum of
\$100,000.

Background

[4] The Appellant Arun Kumar and the Respondent Sun Insurance Co. Ltd entered into a workers' compensation insurance policy under the Workers Compensation Act 1975, in order to indemnify the liability of Arun Kumar, who
5 being an employer engaged in trading activities under the name and style of "Babu's Engineering & Construction Company". Terms of the contract of insurance, restricted the liability of the insurance company to a maximum of \$100,000/-. The said insurance policy is filed at pages 56 to 58 of the record.

[5] One of the employees of the Appellant had sustained injuries while in the
10 employment at a work place of the Appellant. Consequently, the said employee, namely Mohammed Riaz issued a writ of summons dated 26.06.2006, against his employer who is the Appellant in this case, claiming damages for the injuries caused to him in the course of his employment. In that action the judgement was entered in favour of the employee, Mohammed Riaz and the Appellant was
15 directed to pay \$111,703.01 to him.

[6] The Appellant thereafter filed this case in the High Court at Lautoka making the Respondent insurance company, a Defendant and issued writ of summons seeking redress in terms of the Workers' Insurance Policy bearing No 18425 and sought the following orders:
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- (i) *A declaration that the respondent was liable to indemnify the appellant in respect of Workers Compensation Policy No 18425.*
- (ii) *An order that the respondent pay and/or settle the judgment claim against the appellant in Lautoka High Court, Civil Action No HBC 172 of 2006L between the Appellant and Mohammed Riaz and in particular the judgment of his
25 Lordship Justice John Connors of 20th April 2007 in that case.*
- (iii) *A declaration that the respondents liability under Workmen's Compensation Policy No 18425 whilst limited to the sum of \$100,000 for Common Law Liability does not exclude the consequential loss and interest on the award of his Lordship Justice John Connors by reason of the respondents refusal
30 and/or delay in settling the said claim judgment.*
- (iv) *An order that the respondent do pay the appellants costs on a full indemnity basis.*

Findings of the Learned High Court Judge

[7] Having considered all the materials placed before him, Justice Inoke
35 delivered his judgment and made order in terms of prayers 1 & 2 above but limiting the total amount payable to the appellant to the sum of \$100,000 in accordance with the insurance policy. He also ordered the Defendant to pay the Plaintiff costs of the action amounting to \$1,500.00.

[8] The Respondent Sun Insurance Co. Ltd, thereafter paid \$100,000 to the
40 appellant on the 9th February 2011 satisfying the judgment. However, the learned High Court Judge had denied of having the Plaintiff, the relief referred to in prayer (iii) above.

45 Grounds of Appeal

[9] The Appellant, who was not satisfied with the decision of not awarding the interest sought by him in paragraph (iii) above, filed this Appeal to obtain the interest payable on the sum awarded.

[10] No appeal has been filed to claim damages on the consequential loss
50 incurred due to the refusal and/or for the delay in settling the amount awarded in the case filed by the employee even though such damages also had been prayed

for in the same paragraph (iii) referred to above. This could clearly be understood also by looking at the grounds of appeal brought forward in the notice of appeal filed by the Appellant.

[11] The grounds of appeal are:

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- (a) That his Lordship erred in law and in fact in not awarding and/or considering the interest aspect on the award of the said sum of \$100,000.
 - (b) That his Lordship erred in law and in fact in limiting the total award to \$100,000 thereby depriving the Appellant of the interest sum which followed the award made on 20th April, 2007, which interest sum the Appellant would be obliged to pay on the said Judgment sum of 20th April 2007.
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[12] Looking at the two grounds of appeal, it is clear that the contention of the Appellant is to canvas the non-awarding of interest for the sum of \$100,000. The appellant has further contended that the interest claimed by him should be calculated from the date of the judgment namely 20th April 2007.

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Submissions of the Parties

[13] In the Appellant's submissions it is clearly stated that his Lordship Justice Inoke has erred by omitting the consideration of the interest component due on the judgment sum though he had claimed for such interests in the prayer to the originating summons. However, learned Counsel for the Appellant has failed to refer to any law, either in the Statute or in the Common Law, to support his contention namely the right of a judgment creditor to have the interest on the amount due upon judgment.

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[14] Learned counsel for the Respondent summarising his submissions has argued that this appeal should be dismissed for the following reasons:

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- (i) The appellant did not forward arguments on the interest in the High Court.
 - (ii) The insurance policy is a limited general insurance policy and does not provide for interest.
 - (iii) It is a policy which covered third party liability and the appellant was not deprived of the use of the money.
 - (iv) The liability of the respondent to pay under the policy did not arise until 25th January 2011, the date of the judgment of Inoke J.
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Analysis

[15] The matters mentioned hereinbefore clearly show that the Appellant by his grounds of appeal claims only the interest component upon the judgment that had been claimed by him in the originating summons.

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[16] At the outset, it must be noted that in the judgment of Justice Inoke, he has not made any reference as to the aforesaid interest component due upon judgment even though such a claim had been made in the originating summons. Therefore, it is seen that the learned High Court Judge has not addressed his mind to the aspect of paying interest upon judgment though it had been pleaded and prayed for. Therefore, it becomes an omission on the part of the learned trial Judge.

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[17] Against the said background, it is necessary for this Court to ascertain whether the appellant is entitled to have a decision in his favour as to the said interest component in addition to the judgment that he is already having in his favour.

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[18] Payment of interest on the judgment is governed by s 3 of Law Reform (Miscellaneous Provisions) (Death and Interest) Act. (Cap 27). This provision in Law empowers the court to exercise its discretion and make orders for payment

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of interest at such rate as it thinks fit on the whole or any part of the debt or damages or the whole or any part of the period between the date when the cause of action arose and the judgment. However, the section specifically disallows granting relief for the interest upon interest or interest upon a debt arising out of an agreement or otherwise. This section reads thus:

3. *In any proceedings tried in the Supreme Court for the recovery of any debt or damages the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:*

Provided that nothing in this section –

(a) shall authorise the giving of interest upon interest; or

(b) shall apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange.

[19] Aforesaid, s 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act. (Chapter 27) gives the appellant a statutory right to recover interest on the judgment that he has obtained in his favour. The existence of this position of the law was not disputed even by the learned Counsel for the respondent when he made his submissions in this Court. It may have been an oversight, on the part of the learned trial Judge not to have addressed his mind to the matters referred to in the said s 3 when such a claim had been made in the pleadings.

[20] The facts of this case reveal that the judgment in favour of the appellant in this instance had been made when Justice Inoke found that the respondent company is liable to pay the appellant \$100,000/- in terms of the insurance policy obtained under the Tax Invoice 506189/15/04/05 which is filed of record at page 32. The said insurance cover had been obtained to reimburse the expenses incurred for the injuries caused to the employees of the appellant.

[21] Accordingly, at the time, Justice Inoke concluded the case in favour of the appellant; he should have addressed his mind as to the interest component as well especially because such a claim had been made by the appellant in the originating summons. The impugned judgment does not contain any such consideration by His Lordship. Hence, it is incumbent on this Court to interfere with the judgment and grant relief according to the law.

[22] As I have mentioned above, s 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act, provides for the appellant to obtain interest on the judgment. Therefore, I conclude that this is a fit case to grant relief to the appellant acting under the said s 3 of the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act, exercising the discretion of court as mentioned therein.

[23] When exercising discretion of Court, it is incumbent on the Court to exercise the same judiciously. Accordingly, the court should consider all the circumstances of the case before coming to a conclusion as to the payment of interest. Employee Mohammed Riaz had obtained a judgment for the sum of \$111,713.01 against the Appellant being his employer, as damages for the injuries caused to him in the course of his employment. The case at hand was filed by the appellant to claim dues in accordance with the terms and conditions of the aforesaid insurance policy which makes the respondent liable to pay the appellant to settle expenses incurred by the employee Riaz for the injuries caused to him. The amount payable to the employee by the appellant has exceeded the sum

awarded in this case. Moreover, it must be noted that the appellant had to file this action in order to pay his employee though the insurance policy itself makes the respondent liable to honour the terms of the policy without resorting to litigation.

5 [24] In the circumstances, it is my view that it is proper and correct to exercise the discretion of court in this instance, in favour of the appellant in terms of s 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act, enabling him to obtain interest on the judgment.

10 [25] The next question then is to decide as to the manner in which the quantum of interest be decided. s 3 mentioned above clearly states that the date of commencement for the calculation of interest should be the date on which the cause of action has arisen. It also states that the period for the computation of interest should run until the date of the judgment.

15 [26] According to the pleadings filed in this case, the date on which the cause of action has arisen is the date of the judgment in the earlier action HBC 172 of 2006, it being the date the appellant was directed to pay his employee. Admittedly the judgment in the said case filed by the employee had been delivered on 20.04.2007. Therefore, it is clear that the cause of action in the case at hand had arisen on the 20th day of April 2007.

20 [27] Therefore, it is clear that the law provides for the appellant to have the interest on the judgment in addition to the reliefs that he has already obtained upon the pronouncement of the judgment. Then it is necessary to ascertain the rate of interest that is applicable when computing the interest due to the appellant. 25 In the originating summons, the appellant has requested that 4% of interest be paid in this instance. The Decree No 46 of 2011 published in the Gazette bearing No 112 dated 28.10.2011 stipulates thus:

“2. The Law Reform (Miscellaneous Provisions) (Death and Interest) Act [Cap 27] is amended by inserting the following new section after s 3 –

30 *4. - (1) Every Judgment Debt shall carry interest at the rate of four cents per centum per annum from time of entering up the Judgment until the same shall be satisfied, and such interest may be levied under a Writ of Execution on such Judgment.*

(2) Rules of court may provide for the court to disallow all or part of any interest otherwise payable under subsection (1).

35 *(3) Notwithstanding anything contained in this section, the State Proceedings Act or any other written law, no interest shall be payable on any Judgment Debt entered in any proceedings against the State, or the Attorney General.”*

[28] In terms of the said provision in law, I conclude that the rate of interest namely 4% which had been prayed for by the appellant should be the rate of 40 interest that should be applied when calculating the interest in this instance. Also, I decide that the interest so payable should be computed up to the date the sum awarded was paid satisfying the judgment. In this instance the respondent had paid \$100,000/- being the sum awarded on 09.02.2011. Therefore the period 45 between the said two dates namely, 20.04.2007 being the date on which the cause of action has arisen and 09.02.2011 being the date on which the sum awarded in the judgment has been paid, should be the period that should be considered for the purpose of calculating interest in terms of s 3 and 4 of the said Act in Chapter 27.

50 [29] Having considered the statutory provisions of the law, I will now turn to the submissions made by the learned Counsel for the respondent. In this instance, he has argued that the appellant has failed to take up the issue in respect of the

interest on judgment and therefore the trial judge is correct in disregarding the claim of interest payable on the judgment.

5 [30] Merely because no arguments were advanced at the trial stage, judges cannot disregard the consideration of claims made in the pleadings unless such a claim had been abandoned purposely. There is no material to establish that the appellant has abandoned his claim for the interest on judgment. Hence, I am not inclined to accept the said argument advanced by the learned Counsel for the appellant.

10 [31] I will now examine the authorities cited by the learned Counsel for the respondent on the issue. Referring to the case of *Riches v Westminster Bank Ltd* ([1943] 2 All ER 725) he has submitted that a policy of assurance does not bear interest and has quoted the following passage from the said judgment in support of his contention.

15 *“A policy of assurance does not bear interest. That is conceded on all hands. In itself there is neither an express nor an implied contract to pay interest on the amount payable.”*

20 [32] Looking at the said judicial pronouncement it is clear that it relates to the payment of interest due on an insurance policy. It is not incorrect to state that no interest is payable on a policy of insurance unless a condition to that effect is embodied in such a policy. In this instance the interest is claimed not on the basis of the terms of the insurance but the interest on the judgment. Hence, it seems that the learned Counsel has misunderstood the exact issue raised in the grounds of appeal.

25 [33] In the circumstances, I am of the view that the submissions made by the learned Counsel for the respondent do not become relevant to the issue raised in this instance. At the same time, I decide that the appellant is entitled to claim interest on judgment under s 3 and 4 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act since the learned High Court Judge seems to have overlooked the aspect of interest on judgment.

30 [34] Accordingly, I allow the appeal and make order granting interest on the judgment of Justice Inoke, in addition to the reliefs granted to the appellant in the same judgment dated 25.01.2011. The interest component should be assessed on the sum of \$100,000/- awarded in the judgment calculated at the rate of 4% for the period between 20.04.2007 and 09.02.2011. The appellant is also entitled to the costs of this appeal.

[35] **Hettiarachchi JA.** I agree with the judgment and proposed orders of Kankani Chitrasiri JA.

40 **ORDERS OF THE COURT**

[36] Orders of the Court are:

1. The appeal is allowed.
2. The Appellant is awarded interest on the sum of \$100,000.00 at the rate of 4% for the period 20th April 2007 to 9th February 2011.
- 45 3. The Appellant is awarded the costs of the appeal which are fixed summarily in the sum of \$2,500.00.

Appeal allowed.