

Anatol France may sound cynical in saying that “to disarm the strong and arm the weak would be to change the social order, which is my job to preserve. Justice is the means by which established injustices or sanctioned”. But yet it is revealing.

Is it therefore fair to point an accusing finger against a defenders of the frontiers and the machinery of law and order within and put them in the dock for violation of human rights?

Is it not a distortion, a travesty and perversion of the concept of human rights?

This is the gray area in the realm of human rights into which the champions of human rights and The United Nations have to delve deep. It is time now.

Let us pause for a moment and ponder over this issue.

But hope springs in human breast.

To quote *Keats* in conclusion.

“Aye on the shores of darkness there is light and precipices show untodden green. There is budding morrow in midnight, there is a triple sight in blindness keen”.

Let this light in darkness and triple sight in blindness guide us.

Lead kindly light into that heaven of freedom, where the mind is without fear and the head is held high-into that budding morrow

Tomorrow.

## AMBIGUITY OF PERCENTAGE OF RATE OF INTEREST ON AWARDS

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There seems to some confusion among most of us about the rate of interest *i.e.*, percentage of interest the MACTs are to award on Awards under M.V. Act. Now-a-days most of our good friends cite the latest decision *New India Assurance Company v. Chalie and another* reported in 2005 ACJ SC Page:1131, as an effective solution. So let me invite the readers attention to the Paragraph-21 of that judgment. Their Lordships have stated thus.

“Taking the totality of circumstances, on the basis of the various factors indicated above, the quantum of Compensation is fixed at Rs.3,50,000/-. The amount shall carry interest to 0.7.5% per annum from the date of filing the claim application upto the date of payment.....”

This ruling of the Apex Court is not a direction to the Courts below that M.A.C.Ts. must and should award only 0.7.5% of

interest. On the other hand the language is unambiguous and clear as the words and vocabulary used is indicative of the circumstances on which the ruling of 0.7.5% of interest is based. The words “taking the totality of circumstances on the basis of various factors” indicate, that as per the circumstances of that particular case reported in 2005 ACJ SC Page 1131, the Apex Court thought that 0.7.5% is the reasonable interest. In other words the Honourable Supreme Court did not give any specific direction that the Lower Courts must and should award 0.7.5% in every case. Moreover Section 171 of the M.V. Act postulates:

“Where any Claims Tribunal allows a Claim for compensation made under the Act such Tribunal MAY direct that in addition to the amount of Compensation SIMPLE INTEREST SHALL also be paid at SUCH RATE and from such date not earlier than the date of making the claim as it may specify in this behalf”.

From this Section-171 it is clear (1) The discretion is given to the MACT to award interest in addition to the Award amount. (2) Such interest the section mandates “SIMPLE INTEREST” only and at (3) Such Rate. So the MACTs may award interest at their discretion. Can the discretion be arbitrary? No. It should be reasonable, just, taking not only the “Totality of the Circumstances of the case on hand” but also the economic conditions prevailing at that time. That is the reason why the Legislature in its wisdom employed the language - “SUCH RATE” which is of immense significance. This takes us to the Interest Act also - A word about ACT 14/1978 styled as “The Interest Act, 1978”. It owes its origin to English Common Law and to Interest Act of 1839 enacted by the British Government and on the recommendations of the Law Commission of our Government, the bill was introduced in 1978 with such changes - which crystalised as Interest Act of 1978. “It is a statute of importance, since it prescribes the General Law of interest which becomes applicable, in the absence of any contractual or statutory provisions”. Specifically dealing with the subject echoes the preamble of the Act. As per Section 2(a) the Act applies to Tribunals. Since M.V. Act is silent about percentage of the rate of interest it is this Act that applies especially Section-3(I) where the words employed are:

“In ANY proceedings for 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 .....”. Thus this section applies to any preceeding. That means MACT also.

What is more. The financial health of the country is ever fluctuating and the Reserve Bank is like a Vigilant watch dog keeps its eye on the Economic fluctuations and in that

process it tailor the rates of interest time and again as the circumstances warrant. For example in 1990, on Fixed Deposit the rate of interest p.a. was high but in 2001 it plummeted to 9%. That is just the reason why the Honourable Division Bench of the Supreme Court in the landmark decision, - *Kushnuma Begum and others v. New India Assurance Company and others* - reported in 2001 ACJ SC Page:428, keeping all the above mentioned facts, in utmost wisdom has Stated thus in Paragraph 23, keeping the totality of economic circumstances, conditions as well as the backlog of law in their mind.

“Earlier 12% was found to be reasonable rate of simple interest. With a change in economy and the Policy of Reserve Bank of India, the interest rate has been lowered. The Nationalized Banks are NOW granting interest at a rate of 9% on fixed deposits for one year. We, therefore DIRECT that compensation amount fixed hereinbefore at the rate of 9% per annum from the date of the claim made by appellants”.

The word “NOW” employed by the Apex Court in the judgment is of vital importance. It is the life blood of the intention of their Lordships. Now means - the year - i.e., the year 2001. This judgment is a clearcut direction to all the Courts. It is mandatory that the letter and the spirit of the vocabulary quoted above must be honoured by all Courts. This has been reiterated by the Apex Court in the very next year in another judgment reported in 2002 ACJ SC at Page 1559. No such direction has been given in the recent judgment 2005 ACJ SC Page 1131. So, we have to follow the judgment 2001 ACJ SC Page:428 only - its letter and spirit. What is the rate of interest of Schedule Banks in the year 2005? It is not 12% or 9%. So the light of the Interest Act, 1978 as well as the decision of Supreme Court reported in 2001 ACJ SC Page:428 probably the present rate of interest which the Schedule Banks are offering on Fixed Deposits for one year apply to the award under M.V. Act also. Certainly it is neither 12% nor 9% in the year 2005.