

1968 Present: T. S. Fernando, J., and Samerawickrame, J.

THE MUNICIPAL COUNCIL OF COLOMBO, Appellant, and
G. Q. JUNKEER and others, Respondents

S. C. 233 of 1965—D. C. Colombo, 58345/M

Civil Procedure Code—Section 192—Claim for unliquidated damages—Award of interest from date of action—Permissibility.

Where decree for a sum of money is entered in favour of the plaintiff in a suit for unliquidated damages, section 192 of the Civil Procedure Code permits interest on that sum to be awarded from the date of action till the date of decree, and thereafter on the aggregate sum till payment in full. Section 192 does not limit the power of the Court to award interest to cases seeking decrees in respect of liquidated debts only.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with H. Wanigatunga, for the defendant-appellant.

O. Ranganathan, Q.C., with K. Thevarajah and T. Wickremasinghe, for the plaintiffs-respondents.

Cur. adv. vult.

May 8, 1968. T. S. FERNANDO, J.—

The plaintiffs who are the widow and minor children of one Junkeer who had been employed by the appellant, the Municipal Council of Colombo, in the capacity of a motorman/fireman in the Fire Brigade maintained by it have been successful in the District Court in the suit they instituted therein against the Council to obtain a decree for damages in a sum of Rs. 55,000. Junkeer died on 5th November 1962 as a result of a fall when he was engaged on duty with the Fire Brigade, the fall itself resulting directly from the snapping of a cable forming part of what has been described as the Davy Fire Escape. The plaintiffs attributed the snapping of the cable to the negligence of the Council in permitting the rusting of the cable ends, a rusting which was visible over the canvas and had indeed been brought to the notice of the proper officer of the Council. The learned District Judge found that the Council had been negligent and we were, properly, not even invited to interfere with that finding. The finding was based on ample evidence and the only surprise we feel is that the Council should have thought it proper or worthwhile to contest the issue of fact in the District Court. Learned Counsel for the appellant intimated to us that he saw no purpose in addressing arguments in the court of appeal on the issue of negligence.

The District Court decree has awarded to the plaintiffs, in addition to the aforesaid sum of Rs. 55,000, interest thereon at the rate of five per centum per annum from the date of action till the date of decree, and thereafter on the aggregate sum at the same rate till payment in full. Learned Counsel for the appellant Council has contended that the only provision of law that enables a Court to award interest to a plaintiff, viz. section 192 of the Civil Procedure Code, cannot be availed of in the instant case where the plaintiffs are claiming unliquidated damages. He contrasted the language of section 192,—“when the action is for a sum of money due to the plaintiff”—with the corresponding expression in section 34 of the Indian Civil Procedure Code—“where and in so far as a decree is for the payment of money”, and suggested that the Indian provision which covers a wider range of money decrees than mere decrees for money due have received in India an interpretation that excludes from its scope suits for unliquidated damages. He referred to two decisions of Indian High Courts in support of his argument. In *Crewdson v. Ganesh Das*¹, two judges of the Calcutta High Court, in the course of interpreting section 34, said :—“We are of opinion that interest during the pendency of the litigation should not have been decreed. The sum recoverable by the plaintiff is not a debt but unliquidated damages, and interest does not run upon unliquidated damages.” A similar view was taken in the Bombay High Court in *Ratanlal v. Brijmohan*², where Beaumont C.J. expressed himself in regard to a question that arose upon the same section as follows :—“This being a pure case of damages, I do not think we can give interest before judgment”. Mirza J. in the same case said : “As regards the question of interest, the plaintiffs’ claim is for damages, and the decree made is in respect of damages. No interest can be allowed on damages.” Support for the view taken in the two cases above referred to was sought by learned counsel before us by citing the law that obtains on this question in South Africa. In *Union Government v. Jackson*³, Fagan J.A. stated that “the ordinary rule of our law is that liability for interest does not automatically attach to an unliquidated debt—an obligation which has not yet been reduced to a definite sum of money”.

The view taken of the limitations of section 34 by the two High Courts referred to above was not shared by the Madras High Court. In *Ramalingam v. Gokuldas Madavji & Co.*⁴, Spencer J. declined to adopt the decision in the Calcutta case of *Crewdson v. Ganesh Das* (*supra*) and stated “I see no reason why a successful party should be made to suffer because his claim is not decided soon after the filing of his plaint. When he files his plaint he puts the matter in the hands of the Court for decision. If it be held that the plaintiff cannot get interest from the date of his filing his plaint, it is equivalent to saying that the plaintiff must be deprived of the fruits of his success to the extent of losing interest from day to day during the pendency of his suit on the sum that he was entitled to at the date of his going to Court. The date of instituting the suit is the date

¹ (1920) A. I. R. (Cal.) at 739.

² (1956) 2 S. A. L. R. at 412.

³ (1931) A. I. R. (Bom.) 386.

⁴ (1926) A. I. R. (Mad.) at 10022.

upon which the rights of parties are ordinarily determined, and when the decree fixes the amount of damages due, I think they may be taken as fixed as on the date of the suit, and interest allowed on that sum". Venkatasubba Rao J. in the same case, agreeing, stated: "No distinction is made in the section between an ascertained sum of money and unliquidated damages. As a question of construction, I find it difficult to accept the suggestion that the word 'money' in the section should be understood in the limited sense of an ascertained sum. The expression 'decree for the payment of money' is very general and to give it due effect it must be construed as including a claim to unliquidated damages. The Court is not bound to give interest; for, it must be noted, that the section gives a discretion to give or refuse interest; and whatever the nature of the claim is, whether it is a claim to a fixed sum of money or to unliquidated damages, the Court is bound in every case to exercise a sound discretion. The mere fact that the decree is for payment of damages cannot by itself be a bar to the plaintiff being awarded interest." He also went on to say that the plaintiff's right must not be made to depend upon the mere accident of a speedy disposal or otherwise of a case. In a court where there is a congestion of work, a plaintiff may obtain a decree only after the lapse of six years, in another court in six months. Why should the plaintiff's right to get interest be made to depend upon circumstances over which he has no control?

The earlier view of the scope of section 34 that was taken by the Bombay High Court in *Ratanlal v. Brijmohan* (*supra*) was not approved in the later case in the same High Court of *Anandram Mangturam v. Bholaram Tanumal*¹ where Chagla J. (with Stone C.J. agreeing) referred to a yet earlier decision (1925. 12 A. I. R. Bom. 547) and concluded that "the matter is clear beyond any doubt because under section 34 of the Civil Procedure Code it is entirely a matter for the Court's discretion whether to award interest from the date of the filing of the suit where the decree is for the payment of money". Notwithstanding the difference in the language employed in section 192 of our Code as compared with section 34 of the Indian Code, we do not consider that our section limits the power of the court to award interest to cases seeking decrees in respect of liquidated debts. We were not referred to any other relevant cases of our Court where section 192 has been construed; we were informed that there is none. In the case we are concerned with here, Junkeer died in November 1962, the suit was instituted in January 1963 and the decree of the court was granted in March 1965. As we have already observed, the case should not have been contested on the facts. In those circumstances, where the dependants of Junkeer should have received the money about January 1963 and where the non-receipt at that time was attributable to the decision of the appellant to contest the issue of negligence, it is not possible to maintain any contention that the discretion of the court in respect of the awarding of interest has not been properly exercised. We are unable to uphold learned counsel's argument against the awarding of interest from date of action to date of decree.

¹ (1946) A. I. B. (Bom.) 1.

Two other points were advanced on behalf of the appellant. One related to a widows' and orphans' pension to which it is said the plaintiffs are entitled. This question was not adequately considered in the court of trial. No issue was raised in respect of it. The evidence on record does not enable us to ascertain in what circumstances the plaintiffs became entitled to any such pension. It is not unknown that employees under Government and Local Authorities themselves contribute towards widows' and orphans' pension fund Schemes. In the absence of relevant evidence we cannot now hold that any sum the plaintiffs may receive under such a Scheme should be deducted in computing the damages payable by the Council. The other point centred round a gratuity paid in two instalments of Rs. 670 each. We think that the amount of this gratuity, viz. Rs. 1,340, calls to be deducted from the sum awarded as damages. We would direct that the decree be varied accordingly.

Subject to the variation in the decree which would have the effect of reducing the damages to Rs. 53,660 we would dismiss this appeal with costs payable to the respondents.

SAMERAWICKRAME, J.—I agree.

Appeal mainly dismissed.
