

VIRENDRA SINGH

v.

JOHN TABAKITOA

[SUPREME COURT, 1978 (Kermode J.), 7th February]

Civil Jurisdiction

Tort—action for damages—judgment debt—whether interest payable on debt when instalments payable under consent order have regularly been paid.

In an action for damages Judgment by consent was entered for the plaintiff upon terms providing for the payment of the debt by instalments. The defendant complied with the terms and paid off the whole debt. The plaintiff sought to recover interest on the debt.

Held: In the absence of a provision for the payment of interest in the terms of a settlement no interest could be claimed on the debt.

Case referred to:

Clauderg v. Finnerby [1892] 66 L.T. 684

Application to revoke writ of fi. fa.

K. C. Ramrakha for the Plaintiff.

F. S. Lateef for the Defendant.

KERMODE J. :

The defendant seeks an order that the writ of fieri facias issued by the plaintiff be withdrawn on the grounds set out in the affidavit of Feroze Shariff Lateef filed in this action.

The action was for damages for injuries sustained by the plaintiff in a collision between two vehicles on the 29th October, 1971.

On the 22nd day of July, 1973 judgment by consent was entered for the plaintiff and an order made in the following terms:

“This action coming up for hearing on the 22nd day of July 1973 before Mr Justice Tuivaga in Chambers and the said Mr Justice Tuivaga having on the 22nd day of July 1973 ordered by consent judgment be entered for the Plaintiff for the sum of \$2,500.00 and \$50.00 costs.

It is further ordered that the defendant to pay \$50.00 per month with effect from the 30th July, 1973 and in default of any payment the whole amount become due and payable.”

Mr Lateef's affidavit discloses that the defendant regularly paid the monthly instalments and has now paid off the whole judgment debt. No affidavit in reply to Mr Lateef's affidavit was filed by or on behalf of the plaintiff.

Mr Lateef's affidavit also discloses that the plaintiff is insisting on payment of interest on the judgment debt and has issued a writ of fieri facias and has refused to withdraw the writ.

A A writ of fieri facias was issued on the 20th October, 1977, seeking to levy the sum of \$314.92 interest thereon and costs of execution. It is not known how this sum is arrived at but the evidence before me indicates it is interest claimed on the judgment debt.

Mr Lateef relies on the case of *Clauderg v. Finnerby* (1892) 66 L.T. 684 referred to in the White Book in the notes order 42 R.1 at page 536. The name of the plaintiff in the case referred to in the White Book is incorrect and should be Caudery.

B This case is authority for the proposition that interest is not payable on the instalments due under a consent order for payment of a judgment debt which have been regularly paid.

C In Caudery's case judgment by consent was entered for £1,250 and costs to be paid by eight equal half yearly payments. It was provided that execution should not issue if the payments were regularly kept up but that on default the plaintiff might issue execution for the whole amount remaining unpaid. The defendant made regular payments and paid the whole sum but the plaintiff claimed interest on the various instalments and proposed to issue execution for the interest.

It was held that under the circumstances the instalments having all been regularly paid no interest could be claimed.

D Mathew J. critically examined the terms of the consent order in that case and said in his judgment:

"I see no trace of any intention either express or implied that such a liability (for interest) should be cast upon the defendant."

Collins J. in a concurring judgment said:

E "In substance this was an action for unliquidated damages, and the parties agreed, by way of a compromise, on a fair sum to be paid by eight equal half-yearly instalments. Prima facie, in my opinion, that agreement includes any liability for interest, . . ."

F While the order made in the instant action is not as extensive as the order made in Caudery's case it is clear that the plaintiff could not issue execution while the defendant duly complied with the consent order.

Mr Ramrakha relies on Order 44 Rule 18 but this order clearly has no application to the facts of this case. The plaintiff's action was for damages not for debt.

G It was open to the parties who were represented by counsel when settlement was discussed to agree on interest on the judgment debt. The agreement which was reached and embodied in the consent order was for payment of \$2,500 by stated instalments and no mention was made of interest.

The comments of Collins J. in Caudery's case portion of which I have quoted above are apposite. I hold that the defendant having duly complied with the terms of the consent order interest is not payable by the defendant and the plaintiff is not entitled to levy execution for interest on the judgment debt.

H I further order that the writ of fieri facias issued by the plaintiff be revoked.

The defendant is entitled to the costs of this application to be taxed if not agreed and I so order.

Application granted; writ of fi. fa. revoked.