

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**  
**SRI LANKA**

In the matter of an Application for Leave to Appeal against the Judgement dated 10.10.2014 in Case No. WP/HCCA/COL/06/2014 under and in terms of Section 5(c)(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006.

SC Case No.: **SC/APPEAL/69/2016**

Formerly : SC/HCCA/614/2014

HC Case No.: WP/HCCA/COL/06/2014

DC Case No.: 20155/MR

I.M.D. Bandara,  
No. 10/3B, 'Amila'  
Ranawakawatta Road,  
Kalalgoda,  
Pannipitiya.

**PLAINTIFF**

Vs.

1. Director of Health Services,  
No. 355, Deans Road,  
Colombo 10.

2. Thilak Kumara Buddhadasa,

Main Street,  
Mahawa.

3. Charitha Samiddhi Dewapura,  
No. 34, 33<sup>rd</sup> Lane,  
Colombo 06.

4. Sumith Devapura,  
No. 41/1B, Kawdana Road,  
Attidiya Road,  
Dehiwela.

5. The Attorney General,  
Attorney General's Department,  
Hulstdorp,  
Colombo 12.

**DEFENDANTS**

AND THEN BETWEEN

3. Charitha Samiddhi Dewapura,  
No. 34, 33<sup>rd</sup> Lane,  
Colombo 06.

4. Sumith Devapura,  
No. 41/1B, Kawdana Road,  
Attidiya Road,  
Dehiwela.

**DEFENDANT-PETITIONERS**

Vs.

I.M.D. Bandara,  
No. 10/3B, 'Amila'  
Ranawakawatta Road,  
Kalalgoda,  
Pannipitiya.

**PLAINTIFF-RESPONDENT**

AND NOW BETWEEN

3. Charitha Samiddhi Dewapura,  
No. 34, 33<sup>rd</sup> Lane,  
Colombo 06.

4. Sumith Devapura,  
No. 41/1B, Kawdana Road,  
Attidiya Road,  
Dehiwela.

**DEFENDANT-PETITIONERS-APPELLANTS**

Vs.

I.M.D. Bandara,  
No. 10/3B, 'Amila'  
Ranawakawatta Road,  
Kalalgoda,  
Pannipitiya.

**PLAINTIFF-RESPONDENT-RESPONDENT**

BEFORE: Buwaneka Aluwihare, PC, J  
S. Thurairaja, PC, J  
Arjuna Obeyesekere, J

COUNSEL: Kushan D' Alwis, PC with Prasanna De Silva and Milinda Munidasa for the  
3<sup>rd</sup> and 4<sup>th</sup> Defendants-Petitioners-Appellants.  
Shiral Lakthilaka for the Plaintiff-Respondent-Respondent.

WRITTEN SUBMISSIONS: 27.05.2016 & 23.06.2017 for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant-  
Petitioner-Appellants.  
24.06.2016 & 22.06.2017 for the Plaintiff-Respondent-  
Respondent.

ARGUED ON: 02.08.2023.

DECIDED ON: 24.10.2023.

### **JUDGEMENT**

#### **Aluwihare, PC, J,**

This is an appeal against a Judgement of the of the Provincial High Court of the Western Province. The Plaintiff-Respondent-Respondent (hereinafter referred to as the 'Plaintiff) instituted an action by Plaint dated 17<sup>th</sup> September 1997 in the District Court of Colombo against the Defendants in that matter, including the 3<sup>rd</sup> and 4<sup>th</sup> Defendant-Petitioners-Appellants (hereinafter 'Defendants'), seeking *inter alia* a sum of Rs. 1,000,000 as damages. The Plaintiff had also prayed for interest on damages from the date of the Plaint till the date of the Decree as well as legal interest on the aggregate sum awarded as Damages by the Decree, from the date of the Decree till

the date of payment (vide 'P 1', the Plaint at p. 228 of the brief).

The learned District Judge pronounced Judgement on the 2<sup>nd</sup> February 2007, against the Defendants, granting the Plaintiff damages in a sum of Rs. 421,665 together with legal interest until payment in full and costs of suit. The Defendants filed an appeal against this judgement. However, the appeal was dismissed. Acting in terms of the said Judgement, the Defendants deposited in Court a sum of Rs. 421,665. This is evidenced by Journal Entry No. 58 dated 28<sup>th</sup> February 2011 (at p. 222 of the brief).

Subsequently, by way of Motion dated 7<sup>th</sup> August 2012, the Plaintiff made an application presenting a Bill of Costs and calculation of interest ('P5' at pages 262 and 264). According to the said calculation, the amounts that the Defendants were required pay was as follows.

- Rs. 344, 367.16 as legal interest from the date of filing the Plaint (17<sup>th</sup> September 1997) to the date of judgement.
- Rs. 386,390.58 as legal interest from the date of judgement (2<sup>nd</sup> February 2007) to the date of submission of the disputed Bill of Costs and Calculation of legal interest (15<sup>th</sup> October 2012).

According to the calculation, a sum of Rs. 730,757.74 was due.

The Defendants objected to the said Bill and calculation of interest by the Statement of Objections dated 3<sup>rd</sup> April 2013 and took up the position that the court did not award interest to the Plaintiff from the date of filing action up to the date of judgment and the Plaintiff is entitled to interest only from the date of judgement up to the date of the payment of damages awarded by the court. The matter was fixed for inquiry by way of written submissions and on the 23<sup>rd</sup> January 2014, the learned Additional District Judge made Order that the Plaintiff is entitled to a sum of Rs. 47,750 as the costs of suit, and a sum of Rs. 730,757.74 as legal interest and directed the Registrar of the District Court to act in terms of the said Order (*vide* 'P6' at p. 287 of the Brief).

Thereafter, the Defendants sought Leave to Appeal and Leave to Appeal was granted by the Civil Appellate High Court on the question of whether the Order of the learned Additional District Judge (P6) was in conformity with the Judgement of the learned District judge who granted relief to the Plaintiff. The learned Judges of the High Court

delivered judgement on the 10<sup>th</sup> October 2014 dismissing the Defendant's appeal. Aggrieved by the said judgement, the Defendants sought leave to appeal from this Court and upon the same being supported this Court granted Leave to Appeal on the following questions of Law: -

- (a) Have the learned Judges of the High Court misinterpreted the provisions of Section 192 of the Civil Procedure Code in holding that although not specifically mentioned in the judgement, the Plaintiff is entitled to recover legal interest from the date of the action?
- (b) Did the learned Judges of the High Court err in failing to take into consideration that the learned Additional District Judge had awarded legal interest for a period after the 28<sup>th</sup> February 2011 notwithstanding that the sum awarded as damages had been released to the Plaintiff on the said date?
- (c) In any event, is the Plaintiff not entitled to move Court to take steps with regard to the recovery of legal interest without tendering a Decree to be filed of record?

The questions of law which merit determination by the Court are addressed below.

- (a) Have the learned Judges of the High Court misinterpreted the provisions of Section 192 of the Civil Procedure Code in holding that, although not specifically mentioned in the judgement, the Plaintiff is entitled to recover legal interest from the date of the action?**

Relief provided by the Learned Trial Judge

Since the corpus of this appeal directly relates to the relief granted by the learned Trial Judge, it is prudent at this stage to conclusively clarify the relief which was provided by the Judge. The relevant issues, and the answers provided by the Judge to those issues are as follows:

Issue No. 7 as framed by the Plaintiff:

“විසඳිය යුතු ප්‍රශ්න පැමිණිල්ලේ වාසියට විසඳේ නම් පැමිණිල්ලේ ඉල්ලා ඇති සහන ලබා

ගැනීමට පැමිනිලිකරුට හිමිකම් තිබේද?”

The Learned Trial Judge had answered Issue No. 7 as follows;

“කීන්දුචේ සඳහන් පරිදි ලබා ගත හැකිය.”

The Trial Judge, instead of merely answering issue number 7 in the affirmative, has proceeded to answer it in a detailed manner indicating that relief should be granted according to his judgement [‘P2’].

In terms of the Judgement, the relief that was granted is as follows:

“පැමිනිලිකරුට අහිමි වූ ආදායම රු 120,000/- ක මුදලක්ද, වෛද්‍යය වියදම් රු 1,665/- ක මුදලක්ද සහ අත්විඳීමට සිදු වූ අපහසුතා සහ ශරීරික වේදනා සඳහා 300,000 මුදලක්ද වශයෙන් රු 421,665/- මුදල් නඩු ගාස්තුද එම මුදල ගෙවන තෙක් නෛතික පොලියද 3, 4 වින්තිකරුවන්ගෙන් එක්ව හ වෙන් වෙන්ම අය කර ගැනීමට අයිතිවාසිකම් ඇති බවට තීන්දු කරමි.” [emphasis added]

The phrase ‘එම මුදල ගෙවන තෙක් නෛතික පොලියද’, followed by or preceded by no other reference to legal interest (‘නෛතික පොලිය’) clearly indicates that the trial judge only awarded legal interest from the date of the decree, till the date of payment of decreed amount. Therefore, when the trial judge stated that relief is granted in favour of the Plaintiff as stated in the judgment (‘කීන්දුචේ සඳහන් පරිදි ලබා ගත හැකිය’), there can be no doubt or contention that he only intended to award legal interest from the date of decree, till the date of payment of the decreed amount.

The question which remains is whether the Additional District Judge and the learned judges of the Provincial High Court erred in determining that the Plaintiff was owed legal interest from the date of filing of the Plaint.

Was the denial of legal interest from the date of suit an oversight/error on the part of the Trial Judge?

The learned Judges of the Provincial High Court in their Judgement dated 10<sup>th</sup> October 2014 (‘P8’) provides limited reasoning for their position that the Plaintiff is entitled

to legal interest from the date of instituting action. In the four-paragraph Judgement of the learned Judges of the High Court, consideration has only been adverted to Section 192(1) of the Civil Procedure Code and the case of *Colombo Municipal Council v. Junkeer* 71 NLR 85.

Despite arriving at the conclusion that Section 192 *permits* the court to award interest from the date of instituting action, and that the Judgement of the Trial Judge ‘does not specifically mention’ that the Plaintiff is entitled to recover legal interest from the date of action, the learned Judges of the High Court held that the Plaintiffs were entitled to recover legal interest from the date of action, affirming the Order of the additional District Judge.

Section 192(1) states that;

“When the action is for a sum of money due to the plaintiff, **the court may**, in the decree **order interest** according to the rate agreed on between the parties by the instrument sued on, or in the absence of any such agreement at the rate of twelve per centum per annum **to be paid on the principal sum adjudged from the date of the action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.**”

Section 192(3) states that;

“Where such decree is **silent with regard to the payment of further interest** on such aggregate sum as aforesaid **from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate action therefor shall not lie.**”

It would be correct to comprehensively interpret Section 192 as follows:

The court retains the discretion to award legal interest. Where the court decides to award legal interest, it may order that such interest be paid on the principal sum adjudged **from the date of the action to the date of the decree, in addition to any interest to be paid for a period prior to the institution of the action, along with further interest to be paid from the date of the decree to the date of payment, or to such earlier**



**date. However, where the decree is silent on the payment of further interest to be paid from the date of the decree to the date of payment, or to any earlier date, the court is deemed to have refused such further interest.**

Accordingly, the court may award interest for three periods:

- i. Interest for a period prior to filing of suit
- ii. Interest from the date of institution of the action to the date of decree (pendency)
- iii. Interest from the date of decree till payment/earlier specified date.

The principal contention of the Defendants relates to the Additional District Judge's failure to award of interest from the date of institution of the action. In other words, the principal point of divergence between the Judgement of the learned Trial judge and the subsequent Order of the learned Additional District Judge is 'Interest *pendente lite*' up to the date of suit.

At the outset, it must be understood that legal interest is not a penalty, but is the normal accretion on capital, calculated for a particular period (vide *Alok Shanker Pandey vs Union of India & Others* [2007] AIR SC 1198). Per Justice Markandey Katju at p. 1199; "For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B."

It appears to me that the debate on whether *interest pedente lite* must be awarded in suits for unliquidated damages is most strongly evident in Indian Jurisprudence. In fact, in *The Colombo Municipal Council v. Junkeer* [Supra] a case cited and relied on by both the Defendants and the Plaintiff in their submissions), the court referred to the contrasting opinions held by Indian Courts on the matter.

It was observed that a series of cases including *Crewdson v. Ganesh Das 1(1920) AIR (Cal.)* and *Ratanlal v. Brijmohan (1931) AIR (Bom.)*, the Courts held the opinion that

interest for damages does not run from the date of suit because the obligation or compensation to be paid has not yet been reduced to a definite sum of money, and interest accrues to the principle sum decreed to be damages from the date of decree.

In *Ramalingam v. Gokuldas Madavji & Co.* (1926) AIB (Mad.), the court held the opinion that denying the Plaintiff interest from the date of the Plaintiff is akin to stating 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*”. Twenty years later, in *Anandram Mangturam v. Bholaram Tanumal* 1 (1946) AIR (Bom.), it was held, interpreting Section 34 of the Indian Civil Procedure Code, 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.*”

S. 34(1) of the Indian Civil Procedure Code is almost identical to the Section. 192(1) of our Civil Procedure Code, with the latter perhaps deriving inspiration for its form from the former. Section 34(1) of the Indian Code of Civil Procedure, 1908 states: “*Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.*”

The only difference between the two sections appears to be that the Indian Code proscribes discretion where the court decrees a ‘*payment of money*’, whereas the Sri Lankan Code proscribes permissible discretion ‘*when the action is for a sum of money due to the plaintiff*’.

The Plaintiff cited Justice Spencer’s dictum in *Ramalingum v. Gokuldas Madavji* (1926) 51 MLJ 243, which was referred to in *The Colombo Municipal Council v. Junkeer* [Supra] to argue that interest should be granted from the date of suit as of an

entitlement. When considering this holding, one must bear in mind that while it may be applicable to interest on capital sums that one may be entitled to at the time at which the suit is brought due to contractual agreements, it may not necessarily be applicable to cases such as the instant, where no capital sum as damages or entitlement is determined at the time of suit.

It must also be noted that despite citing the holding in *Ramalingam's* case [supra], Fernando, J, in *Colombo Municipal Council v. Junkeer* [supra], went onto hold that “*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.*” and also that “*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.*” [at p. 87]. The Court then answered the question whether interest **should not have been awarded** from the date of the action **in that case** in the negative.

Although I have alluded to the position of our jurisprudence relating to the province of *interest pedente lite* to enrich my reasoning, I am conscious that in the present appeal, the Court must not engage in a deduction or discernment as to whether the learned District Judge had *reasonably* exercised his discretion. Such an inquiry is not within the ambit of this appeal. This appeal only requires the Court to determine **whether the learned District Judge bore a discretion to refuse legal interest from the date of the action, and whether the Judge's silence on the matter is to be interpreted as refusal of such interest.**

Furthermore, looking beyond *stare decisis*, I observe that it is academically understood that where a decree is silent regarding any further legal interest (any legal interest beyond that which is already expressly awarded), the decree must be interpreted to have denied such further interest.

According to K.D.P Wickremasinghe,

*“If the decree is silent as to further interest, the Court is deemed to have refused such interest.”* [*Civil Procedure Code in Ceylon* at page 227].

Therefore, although it is understood that legal interest may be provided, and in most cases, is provided from the date of the institution of the action, as per Section 192(1) of the CPC, Judges are not mandatorily obligated to grant such relief. The drafters of Section 192(1), being conscious of the myriad of considerations before the Judge, bestows upon the Judge, a discretion in the matter.

In this respect, it was argued on behalf of the Plaintiff that generally, if the District Court decides to hold in favour of the Plaintiff, relief prayed by that Plaintiff in the Plaint is granted, and if in some case, the Court wishes to vary such relief prayed and only grant some relief and not the rest, then what the Plaintiff would be entitled to is relief that is specifically referred to in the judgement. In my view, this is precisely what the learned District Judge had done when he said that relief is granted “**නීන්දුමටි සඳහන් පරිදි**” [**in the manner specified in the judgement**].

It is perplexing that the Plaintiff would not have discovered that legal interest had not been awarded from the date of the plaint, and then canvassed that ground before the Additional District Judge before filing a Bill of Costs claiming interest from the date of the plaint. If the Plaintiff wished to impugn the judgement of the learned trial judge, by canvassing the opinion that legal interest should have been granted from the date of suit to the date of decree, in addition to the legal interest granted from the date of decree till the date of payment, the Plaintiff ought to have resorted to the recourse provided by the law. Instead, at a subsequent date, after the Defendants had already deposited damages per the judgement, the Plaintiff filed a Bill of Costs, and the calculation of legal interest therein was not in conformity with the judgement.

Regrettably, the learned Additional District Judge, operating under the assumption that he could, by another Order remedy the purported defect in the Judgement of the learned Trial Judge without expressly addressing such defect as a question of law, ordered that legal interest must be paid per a sum calculated from the date the action was instituted. Thereafter, the learned Judges of the High Court affirmed the said

calculation of the Additional District Judge.

That judges retain discretion over the awarding of relief for damages indeterminate at the date of filing the action is not a position unique to our jurisdiction. The examination of Indian Jurisprudence and the Civil Procedure Laws of India affirms that a Judge retains discretion regarding the award of legal interest from and till whichever stage of the action or decree.

Therefore, for all the reasons elucidated above, I answer this question of law [(a)] in the positive. That is to say that, yes, the learned Judges of the High Court misinterpreted the provisions of Section 192 of the Civil Procedure Code in holding that although not specifically mentioned in the judgement, the Plaintiff is entitled to recover legal interest from the date of the action.

**(b) Did the learned Judges of the High Court err in failing to take into consideration that the learned Additional District Judge had awarded legal interest for a period after the 28<sup>th</sup> February 2011 notwithstanding that the sum awarded as damages had been released to the Plaintiff on the said date?**

In the Calculation of Legal Interest submitted with the Bill of Costs before the Additional District Judge, legal interest has been calculated up to 05.10.2012. It is acknowledged by the learned Judges of the High Court that the decreed amount was promptly deposited by the Defendants on 28.02.2011. This is evidenced by Journal Entry No. 58 of the brief. However, the learned Judges of the High Court affirmed the Order of the Additional District Judge which orders payment of legal interest up to 05.10.2012.

There can be no rational argument that the Plaintiff was entitled to legal interest beyond the date of payment of damages. Such a position is anathema to the concept of Legal Interest. Therefore, I answer this question [(b)] too in the affirmative. The learned Judges of the High Court erred in failing to consider that the learned Additional District Judge had awarded legal interest for a period after the 28<sup>th</sup> February 2011 notwithstanding that the sum awarded as damages had been released to the Plaintiff on the said date.

For the reasons setout above, the Appeal is allowed. The Plaintiff is only entitled to legal interest from the date of the judgement of the trial judge (2<sup>nd</sup> February 2007) to the date wherein the Defendants deposited the sum awarded as damages to the Plaintiff (28<sup>th</sup> February 2011).

Accordingly, the order of the learned Additional District Judge dated 23<sup>rd</sup> January 2014 and the judgement of the High Court of Civil Appeals dated 10<sup>th</sup> October 2014 are set aside. The learned District Judge is directed to calculate the component of interest payable to the Plaintiff as stipulated in the judgement of the learned District judge dated 2<sup>nd</sup> February 2007 and in line with the views expressed in this judgment.

The respective parties to bear the costs of this case.

*Appeal allowed.*

JUDGE OF THE SUPREME COURT

JUSTICE S. THURAIRAJA, PC, J

I agree.

JUDGE OF THE SUPREME COURT

JUSTICE ARJUNA OBEYSEKERE, J

I agree.

JUDGE OF THE SUPREME COURT