

THE LAW COMMISSION WORKING PAPER NO.66

INTEREST

Comments submitted by a working group of B.I.L.A.

1. Our consideration has been limited to Part V and paragraphs 80 - 83 of this Paper owing to the very short time available to us in which to submit our comments.

Part V

2. The Court should have wide discretion to award interest or not at such rate or rates as the justice of the case demands. It is desirable, however, that there shall be a number of general rules which will normally be adhered to so that the parties may assess their position with reasonable certainty.

3. The law and practice in Admiralty cases should be the same as in other cases.

4. We accept the basic principle that interest is payable to compensate the Plaintiff for being kept out of his money.

5. From this basic principle it follows that interest will normally be awarded on special damage (pecuniary loss). Future pecuniary losses should not bear interest (cf. para. 18 page 12 of the Paper). The basic rate of interest should be the rate fixed for the Short Term Investment Account; and in the case where the damage accrues from day to day, or comprises a number of items incurred at various times, it will normally be fair to allow interest from the date when the cause of action arose (para. 22 page 15) at half the normal rate. In many cases, e.g. where there is a single item of special damage, interest should be paid from the date of the loss (for example, the date when the bill was paid) at the full rate.

6. In the case of non-pecuniary losses (e.g. pain and suffering), in general there should be no interest awarded as such because of the impossibility in most cases of distinguishing in financial terms between e.g. past suffering and future suffering; but the Court in arriving at the amount of the damages should be at liberty to pay regard to the time which has elapsed since the cause of action arose (para.19 page 12). We bear in mind the tax advantage to the Plaintiff in not designating any part of the award as interest.

7. The view mentioned in para. 6 above seems to us to be equally applicable to awards under the Fatal Accidents Acts. In special cases the Court would exercise its general discretion (mentioned at para. 2 above) to award interest on loss of dependancy down to the date of Judgment.

8. It seems to us anomalous and unsatisfactory that the effect of a payment into Court is judged not against what is recovered in Court in toto but only against the amount of the damages apart from interest. Under the present rule a Plaintiff could recover substantially more than the amount paid in and yet have to bear costs after the date of the payment in.

The rule should be that if the Plaintiff does not accept the payment in, the money should be transferred to the Short Term Investment Account. If the amount of damages and interest which the Plaintiff recovers (ignoring interest accruing from the date of the payment in) is less than the amount paid in, he should bear costs from the date of the payment in.

The principle should be that the amount paid in is regarded as including interest up to that date (although it should not be necessary to specify in the notice given by the Defendant what amount of interest is included) and the question as regards costs should depend simply on whether, as at that date, the Defendant correctly assessed the position.

If at the date of the Judgment the money paid in plus interest since payment in, exceeds the damages plus interest awarded (even though the amount paid in is less than the damages plus interest awarded up to the date of the payment in) the excess will be paid to the Defendant.

9. Interest on interest

If the sum recovered by way of damages represents interest, the Court should have power to order payment of interest on it (para.114 page 76).

10. Damages recovered without full trial

There is no justification for distinguishing between damages recovered without full trial and those recovered after full trial. Unliquidated damages always have to be assessed by the Court and there is no reason why interest should not also be assessed (para.112 page 75).

11. Where interest is awarded the rate should accord with that of the Short Term Investment Account from time to time during the period for which the award is made: for otherwise it would not be possible to assess interest likely to be awarded when considering whether to accept money paid into Court. It is desirable that the rate should be published from time to time.

Paragraphs 80 - 83, Pages 50 - 52

12. We approve the recommendation that in the case of money due under a Contract of Insurance, not being a Contract of Indemnity, statutory interest should run from the moment the money becomes payable under the Policy, but subject to one qualification. The vast majority of such claims are settled promptly and it seems to us that it is generally undesirable that a normal business delay of a week or two should involve the payment of interest. We suggest therefore that if a claim is settled within, say, one month after the date the money becomes payable, no interest should be paid. But if payment is not made within that time, interest should run from the date when the money becomes payable.

We agree with the view expressed in para.83 (as expanded in para.86). It would be convenient to allow the same time for payment after demand as is allowed for the payment of money under a non-indemnity insurance subject, in the case of insurance, to the point made in the last sentence of the preceding paragraph.

13. We agree that money payable under a Policy of Indemnity should be treated, for the purpose of assessing interest, as if it were an award of damages.

General

14. In passing. Our attention has been drawn to para.93 of the Paper and also to paras. 72 and 73.

It appears to us that in smaller cases the interests of the parties may best be served by simplicity and certainty and other than that there should be the wide discretion referred to in para.2 above. Possibly different rules could be applied in County Court actions from those applied in the High Court.

We think that there should not be, as suggested in para.73 of the Paper, a figure below which statutory interest should not be awarded but that where an action is brought in the County Court awards of interest should be calculated on a simple fixed formula.