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DECISION



*L. Centola*  
66-14  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: A-191028

DATE: March 27, 1978

MATTER OF: Lovett v. United States - Interest on judgment

DIGEST: Interest on judgment under Federal Tort Claims Act entered by District Court against United States and not appealed by United States may not be paid since interest in such case is precluded by first proviso of 31 U.S.C. § 724a.

Lovett v. United States (Civil No. 74-233-TUC-WCF) was a wrongful death action brought in the United States District Court for the District of Arizona under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. Judgment was entered for plaintiff Virginia L. Lovett on August 9, 1977, in the amount of \$141,781.38 plus costs. The judgment further directed the setoff of certain amounts which had been paid to plaintiff by the Veterans Administration (VA) pursuant to 38 U.S.C. § 351. There was no mention of interest. Costs were assessed at \$380.92, and the amount paid by VA was determined to be \$13,069.86. The United States did not appeal and the Department of Justice submitted the judgment to us for payment on November 21, 1977. On December 8, 1977, our Claims Division certified the judgment to the Treasury Department, and a check in the amount of \$129,092.44 was issued to the plaintiff shortly thereafter.

Plaintiff, through her counsel, citing 28 U.S.C. §§ 1961 and 2411(b), has questioned the correctness of our settlement action in that the check did not include any amount for interest on the judgment. For the reasons that follow, we conclude that interest is not properly payable on this judgment, and that our settlement action was therefore correct.

It is undisputed that interest is not recoverable against the United States except as authorized by statute or contract. United States v. Maryland ex rel. Meyer, 349 F.2d 693, 694 (D.C. Cir. 1965). The question thus becomes whether there is any statutory basis for the allowance of interest in Lovett.

Interest on district court judgments is authorized by 28 U.S.C. § 1961, which provides in pertinent part:

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"Interest shall be allowed on any money judgment in a civil case recovered in a district court. \* \* \* Such interest shall be calculated from the date of the entry of the judgment, at the rate allowed by State law."

This provision, however, is applicable only to private litigants and not to suits against the United States. Reed v. Howbert, 77 F.2d 227 (10th Cir. 1935).

Post-judgment interest on judgments against the United States under the Federal Tort Claims Act is generally authorized by 28 U.S.C. §§ 2411(b), set forth below:

"Except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under section 1346 of this title, interest shall be computed at the rate of 4 per centum per annum from the date of the judgment up to, but not exceeding, thirty days after the date of approval of any appropriation Act providing for payment of the judgment."

However, section 2411(b) cannot be applied without regard to 31 U.S.C. § 724a, the permanent indefinite appropriation for the payment of judgments against the United States which are not otherwise provided for. The relevant portion of 31 U.S.C. § 724a is set forth below:

"There are appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements, which are payable in accordance with the terms of section 2414, 2517, 2672, or 2677 of Title 28, together with such interest and costs as may be specified in such judgments or otherwise authorized by law: Provided, That interest on a judgment of a district court to which the provisions of section 2411(b) of Title 28 apply, payable from this appropriation, shall be paid only when such judgment becomes final after review on appeal or petition by the

United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance (except that in cases reviewed by the Supreme Court interest shall not be allowed beyond the term of the Court at which the judgment was affirmed) \* \* \*."

Prior to May 4, 1977, section 724a applied only to judgments and awards not in excess of \$100,000. The \$100,000 limitation, however, was eliminated by Pub. L. No. 95-26 (May 4, 1977), Chapter XIV, 91 Stat. 61, 96 (from which the above quotation is taken), and section 724a now applies without regard to the amount of the judgment. The courts have clearly established that the first proviso of 31 U.S.C. § 724a is a limitation on the more general authorization of 28 U.S.C. § 2411(b). E.g., United States v. Maryland ex rel Meyer, 349 F.2d at 694; United States v. Jacobs, 308 F.2d 906 (5th Cir. 1962); Black v. United States, 444 F.2d 1215, 1217 (10th Cir. 1971).

The first proviso of 31 U.S.C. § 724a, quoted above, limits the entitlement to interest to those cases in which the Government appeals and loses, and establishes the beginning and ending dates for interest computation in such cases. A review of the legislative history and of judicial precedent permits no other interpretation. Section 724a was originally enacted as section 1302 of the Supplemental Appropriation Act of 1957, 70 Stat. 678, 694. The first proviso was explained in detail in a statement prepared by the Bureau of the Budget (now Office of Management and Budget), as follows:

"The present situation with respect to the payment of interest is undesirable in two respects-- first, the Government, because of the delay in making appropriations, bears the expense of interest which could be saved if appropriations were available for payment of the judgments when rendered; and second, there is a wide variance between the provisions of law respecting the payment of interest on judgments rendered by the district courts as compared with those rendered by the Court of Claims. Interest is paid on Court of Claims judgments only when the United States appeals and then only from the date when the transcript of the judgment is filed with the Treasury Department to the date of the mandate of affirmance. Interest is paid on

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judgments of the district courts, regardless of whether the Government appeals, from the date of the judgment to a date not later than 30 days after the making of an appropriation for payment of the judgment.

"It is believed that the provision for the payment of interest in cases where the Government appeals, as now prescribed by law with respect to judgments in the Court of Claims, is fair and equitable and need not be disturbed. If this belief is correct, it would follow that interest should be paid on judgments of the district courts on the same basis. If interest on judgments of the district courts were placed on the same basis as the Court of Claims, interest on district court judgments not appealed by the United States would be eliminated entirely. In district court cases which are appealed by the Government, interest would be eliminated from the date the judgment was rendered to the date the plaintiff filed a transcript thereof with the proper Government agency, and from the date of the mandate of affirmance to the time when a specific appropriation could be secured for the payment of the judgment.

\* \* \* \* \*

"The first proviso would change the procedure with respect to district courts by permitting the payment of interest on judgments, to which the provisions of 28 United States Code 2411(b) apply, only in cases appealed by the United States. \* \* \*" (Emphasis added.)

Hearings on Supplemental Appropriation Bill, 1957, Before Subcommittees of the House Committee on Appropriations, 84th Cong., 2d Sess., pt. 2, at 883-885 (1956).

In United States v. Culp, 346 F.2d 35 (5th Cir. 1965), the court modified a judgment under the Federal Tort Claims Act to conform to 31 U.S.C. § 724a, stating:

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"[I]t is clear that Congress has provided that interest should run only in case of an appeal by the United States, and then only from the date of filing of the transcript of the judgment in the General Accounting Office to the date of the mandate of affirmance." 346 F.2d at 36.

Judgments containing interest provisions at variance with section 724a were similarly modified in United States v. Mississippi Valley Barge Line Co., 285 F.2d 381, 386 (8th Cir. 1960), and Chicago, Rock Island & Pacific Ry. Co. v. United States, 206 F. Supp. 795 (S.D. Iowa 1962). It seems clear therefore that interest is not payable on district court judgments not appealed by the Government, and the inclusion of a contrary interest provision in the judgment (other than a general provision such as "interest as provided by law" or other general language which would permit the application of section 724a) would have been grounds for the Government to seek modification of the judgment.

In view of the foregoing, we must conclude that there is no basis for the allowance of interest in the Lovett case, and our settlement action of December 8, 1977, is therefore affirmed.

Deputy

  
Comptroller General  
of the United States