

CPLR 5001(a): Interest from Time of Accident Denied in Breach of Warranty Action for Personal Injuries

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plaintiffs.¹⁷³ The court reasoned that subdivision 2 must either apply to commercial actions or to all actions wherein it is the defendant who applies for the preference.¹⁷⁴

The court's decision appears to be especially sound in view of the rationale underlying the grant of a preference in an attachment situation. The preference is for the benefit of the defendant so that his property is not unnecessarily encumbered for long periods of time.

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5001(a): Interest from time of accident denied in breach of warranty action for personal injuries.

In *Gillespie v. Great Atlantic & Pacific Tea Co.*,¹⁷⁵ the Court of Appeals ruled on the question of whether or not interest will be allowed from the date of injury in personal injury actions based on breach of warranty. Plaintiff, injured by flying glass when a carton of quinine water exploded, contended that since the action was based on "breach of performance of a contract"¹⁷⁶ interest should be recoverable from the date of the accident.

In a previous warranty action for personal injury, *Gellman v. Hotel Corp. of America*,¹⁷⁷ interest was allowed from the date of the accident. It was reasoned that since the action was grounded in contract, interest should be allowed.¹⁷⁸ *Gillespie*, however, makes it clear that where the action is based on personal injury, no interest will be allowed.

CPLR 5002: Interest allowed from date of arbitration award.

By virtue of CPLR 5002, interest is recoverable upon a sum awarded "from the date the verdict was rendered or the report or decision was made to the date of entry of final judgment." Until recently there has been some confusion as to whether or not interest could be recovered on an arbitration award. Commentators have stated that since it is arguable that arbitration

¹⁷³ 56 Misc. 2d at 509, 288 N.Y.S.2d at 734.

¹⁷⁴ *Id.*

¹⁷⁵ 21 N.Y.2d 823, 235 N.E.2d 911, 288 N.Y.S.2d 907 (1968) (mem.).

¹⁷⁶ See CPLR 5001(a).

¹⁷⁷ 46 Misc. 2d 521, 260 N.Y.S.2d 154 (Civ. Ct. Bronx County 1965).

¹⁷⁸ 5 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5001.07 (1965). But see 7B MCKINNEY'S CPLR 5001, supp. commentary 84 (1967) (contending that although the action is nominally for breach of warranty, it is in reality basically a tort action).