

NO. CV 02 0564298

HERBERT HICKS

SUPERIOR COURT

V.

JUDICIAL DISTRICT OF NEW LONDON
AT NEW LONDON

STATE OF CONNECTICUT, ET AL

JANUARY 14, 2009

FILED
JAN 13 2009
SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT OF NEW LONDON

MEMORANDUM OF DECISION

FACTS

In his motion for post-judgment interest, the plaintiff, Herbert Hicks, alleges the following facts. On October 3, 2005, a jury returned a verdict in favor of the plaintiff in his automobile negligence case, brought under General Statutes § 52-556¹, against the defendant, the State of Connecticut. Following the defendant's appeal, the Supreme Court affirmed the judgment on June 24, 2008. On September 5, 2008, the Supreme Court denied the defendant's motion for reconsideration and reconsideration en banc. On September 16, 2008 the defendant tendered a check to the plaintiff to satisfy the judgment but failed to include post-judgment interest. On September 23, 2008, the plaintiff moved for an award of post-judgment interest pursuant to General Statutes § 37-3b.²

1

§ 52-556 allows the state to be sued in cases arising out of the negligent operation of a state owned motor vehicle and provides: "Any person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury."

2

§ 37-3b mandates that post-judgment interest, at a rate of no more than ten percent, be awarded in negligence cases and, in relevant part, provides: "For a cause of action arising on or after May 27, 1997, interest at the rate of ten percent a year, and no more, shall be recovered and allowed in any action to recover damages for injury to the person, or to real or personal property, caused by negligence, computed from the date that is twenty days after the

On October 14, 2008, the defendant filed an objection to the plaintiff's motion for post-judgment interest arguing that sovereign immunity precludes the court from assessing post-judgment interest against the state.

DISCUSSION

“With the enactment of § 52-556 . . . the state expressly waived sovereign immunity in motor vehicle *negligence* actions. . . . The legislature's use of the term ‘negligence’ in § 52-556 manifests the obvious intention of the legislature to consent to suit against the state based on the breach of a common-law duty of care in the operation of state owned and insured vehicles by state employees and officials. . . . Because the language of § 52-556 expressly waives the state's immunity from suit based on common-law negligence, it appears that the legislature intended § 52-556 to incorporate the principals governing existing common-law negligence actions, and that the statute was not intended to create a separate statutory action to which different principals of liability and damages would apply. . . . In other words, § 52-556 does not create a heretofore unrecognized cause of action, but instead is a waiver that permits an already established common-law negligence action to be brought against the state.

“[The court turns its] attention, therefore, to the rules that governed negligence actions when the legislature enacted § 52-556. Section 52-556 initially was enacted in 1927 . . . and has remained substantially unchanged since that time. . . . [W]hen the legislature enacted § 52-556, it intended that the substantive rules governing negligence actions generally would apply to the actions brought pursuant to § 52-556.” (Citations omitted; emphasis in original; internal quotation marks omitted.) *Babes v. Bennett*, 247 Conn. 256, 263-6, 721 A.2d 511 (1998).

date of judgment or the date that is ninety days after the date of verdict, whichever is earlier, upon the amount of the judgment.”


“Noncontractual interest on money wrongfully detained was not sanctioned at common law . . . but has long been awarded pursuant to statute in Connecticut. . . . The annotations to § 4600 of the 1902 revision of the General Statutes indicate that statutory interest has existed since 1702, and that damages have been allowed in Connecticut cases pursuant to statute since at least 1814.” *Paulus v. LaSala*, 56 Conn. App. 139, 148-49, 742 A.2d 379 (1999). “In 1981 . . . the legislature divided [the statute providing for statutory interest] into § 37-3a, previously providing for interest in civil actions, and § 37-3b, allowing interest in negligence actions from the date of judgment, both statutes provided for a discretionary ‘may’ basis. . . . In 1997 . . . the legislature changed the wording of § 37-3b from the discretionary ‘may’ to the mandatory ‘shall’.” *Mack v. LaValley*, Superior Court, judicial district of Tolland, Docket No. CV 94 55707 (June 28, 2000, *Sullivan, J.*) (27 Conn. L. Rptr. 448).

Importantly, when interest is allowed or called for, it is an element of damages relating to the wrongful detention of compensation, and not an extra cost or fee assessed to the liable party. General Statutes § 37-3a, which allows for post-judgment interest in non-negligence cases states that interest is available “as damages for the detention of money after it becomes payable.” Further, in a case dating back to 1900, the Supreme Court explained that “damages in the nature of interest” are proper when a tortfeasor delays compensation. *New York, New Haven and Hartford Railroad Co. v. Ansonia Land and Water Power Co.*, 72 Conn. 703, 706, 46 A. 157 (1900). Similarly, the Supreme Court has stated “[i]nterest upon a demand which is unpaid when due is ordinarily not given as interest *eo nomine*, but as damages for the detention of money, which for the sake of convenience is measured by the interest on the sum due.” *Blake v. Waterbury*, 105 Conn. 482, 486, 136 A. 95 (1927). More recently, the Supreme

Court stated that “if the detention of money is wrongful under the circumstances, the award of interest is a proper element of damages.” *E. Paul Kovacs & Co., Inc. v. Alpert*, 180 Conn. 120, 128, 429 A.2d 829 (1980).

When the legislature waived sovereign immunity for the negligent operation of state vehicles under § 52-556, it subjected the state to the substantive rules governing negligence actions at that time. *Babes v. Bennett*, supra, 247 Conn. 266. The statutory right to post-judgment interest as an element of damages, as currently codified in General Statutes § 37-3b, was applicable in negligence cases long before the legislature waived sovereign immunity for negligence actions under §52-556 in 1927 and, as such, the state is subject to § 37-3b in actions brought against it under § 52-556.

Section 37-3b mandates that “interest at the rate of ten percent a year, and no more, shall be recovered and allowed in any action to recover damages for injury to the person, or to real or personal property, caused by negligence, computed from the date that is twenty days after the date of judgment or the date that is ninety days after the date of verdict, whichever is earlier, upon the amount of the judgment.” Once the court has determined that post-judgment interest is appropriate under § 37-3b, the court must start its accrual at the time indicated in the statute and has no discretion to alter that accrual date. See *Misiurka v. Maple Hill Farms, Inc.*, 15 Conn. App. 381, 386, 544 A.2d 673 (1988). Accordingly, the defendant is ordered to pay the plaintiff interest on the judgment amount at the rate of ten percent running from January 1, 2006.



Martin, J.