

GUJARAT HIGH COURT

Jayantilal Ambalal Parmar

Vs.

Gujarat State Road Transport Corporation

Civil Application NO. 3398 of 1994 in First Appeal No. 141 of 1988

(A.P. Ravani, B.S. Kapadia, K.J. Vaidya, C.K. Thakker and J.M. Panchal, JJ.)

01.09.1994

JUDGMENT

Ravani, J.

1. A Division Bench of this Court (Coram : B. N. Kirpal, C. J. and R. K. Abichandani, J.) by the following order dated August 8, 1994 passed in Civil Application No. 3398 of 1994 in First Appeal No. 141 of 1988 has referred this matter to a Full Bench of Five Judges :

"It is inter alia contended that in view of the judgment of the Supreme Court in 1994 Acc CJ 1 , earlier Full Bench decision of this Court in the case reported at (1993) (1) 34 Guj LR 779 will really not be applicable. The Supreme Court has laid down as to how the compensation should be distributed and invested, while reiterating the earlier decision relating to compensation qua the Bhopal Gas tragedy. This being so, the directions contained in the Full Bench judgment of this Court cannot be given effect to, as they would be in conflict with the judgment of the Supreme Court. In view of the aforesaid, we issue Rule and direct that this case be listed before a Full Bench of Five Judges on 18th August, 1994 at 2.45 p.m. for final hearing."

In substance, the reference is to resolve the following questions :

(2) Is there conflict between the guidelines laid down by the Hon'ble Supreme Court in relation to disbursement and investment of the amount of compensation awarded in motor accident claim cases in the case of *GM, Kerala State Road Transport Corpn. v. Susamma Thomas, reported in¹* (decided on January 6, 1993) and the guidelines laid down by a Full Bench consisting of three Hon'ble Judges of this High Court in the case of *New India Assurance Co. Ltd. v. Kamlaben, reported in²*

(2) If there is conflict, is it reconcilable ? If not reconcilable, which guidelines are

required to be followed by the High Court and the Motor Accident Claims Tribunals in the State ?

¹1994 Acc CJ 1

²1993 (1) 34 Guj LR 779

The order of reference indicates that the entire case is referred to Full Bench for final hearing. However, in the facts of the case and having regard to the overall circumstances of the case, in our opinion, if the aforesaid questions are answered, it would not be necessary to finally hear and decide the First Appeal and the Civil Application by this Full Bench. It would be appropriate to answer the aforesaid questions and thereafter leave it to the Division Bench to hear and decide the case on merits.

2. Facts in brief relating to First Appeal No. 141/88:

The applicant herein was knocked down from his bicycle by ST bus GRS 6618 at about 2.30 p.m. on June 1, 1981 in the outskirts of village Ataldara, Dist. Baroda. The unfortunate accident took place just five days after the marriage of the applicant. On account of the accident, he received certain injuries and was hospitalized as indoor patient from June 1, 1981 to July 20, 1981. He filed motor accident claim application on July 27, 1981 and it was registered on July 9, 1982 as M.A.C. Application No. 243 of 1982. Initially the claim was for ₹ 25,000/- only. By subsequent amendments, it was enhanced from time to time and ultimately it was enhanced to ₹ 2 lakhs. The injury was on the pelvic region of the body and as found by the Tribunal the applicant had become sexually impotent due to the injury.

3. The Tribunal after recording the evidence and after hearing the parties passed award holding that the applicant was entitled to claim ₹ 1,16,800/- (Rupees one lakh sixteen thousand eight hundred only) together with interest at the rate of 12 per cent per annum from the date of application till realization and proportionate costs. The Tribunal held that the Driver as well as the ST Corporation will be jointly and severally liable. As regards the disbursement and investment, the Tribunal gave the following directions :

"Out of the above said awarded amount of compensation an amount of ₹ 4800/- with costs and interest shall be paid in cash to the applicant. The remaining amount of ₹ 1,12,000/- (Rupees one lac and twelve thousand only) shall be deposited in the fixed deposit account of one of the nationalized banks for a period of seven years. The applicant shall not be entitled to raise any loan or advance from the bank whatsoever against the above said fixed deposit receipt. Deficit court-fees, if any, shall be recovered from the applicant."

4. The applicant herein i.e. Gujarat State Road Transport Corporation, preferred an appeal against the aforesaid award of the Tribunal. The appeal has been ultimately registered as First Appeal No. 141/88 wherein the claim has been restricted to ₹ 85,000/- (Rupees eighty-five thousand only). Appeal has been admitted by a Division Bench of this Court by order dated March 24, 1988.

5. In the pending First Appeal, the applicant had filed on earlier occasions three different civil applications for withdrawal of the amount deposited by the appellant. However, for deciding this reference, it is not necessary to refer to the details of these applications. The applicant-claimant filed Civil Application No. 3398/94 on June 13, 1994 and inter alia prayed for passing order to renew the fixed deposit and to pay up the accrued interest on the fixed deposit and to fix the appeal for final hearing immediately. It is on this application, the Division Bench of this Court (Coram : B. N. Kirpal, C.J. and R. K. Abichandani, J.) passed order dated August 8, 1994 which has been reproduced herein-above.

Backdrops as regards case law :

6. *Muljibhai v. United India Insurance Co. Ltd.*³,

A Division Bench of this Court (Coram : A. M. Ahmadi, J. as he then was and R. C. Mankad, J. while deciding Civil Application No. 1286 of 1982 in First Appeal No. 775 of 1980 laid down certain guidelines to be followed by the Tribunals while awarding compensation in the case of *Muljibhai v. United India Insurance Co. Ltd.*, reported in⁴ It was a case in which the claimants were awarded an amount of ₹ 14,000/- with proportionate cost and interest at the rate of 6 per cent per annum from the date of claim application till the payment or realisation. The claimants belonged to Harijan community and were poor and illiterate persons. They were the parents of the unfortunate victim of the accident. Against the award of the Tribunal, appeal was filed in the High Court. While admitting the appeal, the High Court directed that the entire amount awarded together with interest and proportionate costs should be deposited by the appellant within specified time limit in the Tribunal. Since the amount was deposited, the claimants filed application for withdrawal of the amount. While deciding the application, the Division Bench of this Court inter alia, observed that the Claims Tribunal ought to have made some provision for the investment of the amount awarded to the claimants so that the same may not be squandered away or lost to the applicants. The Division Bench further observed that the paramount consideration of the Claims Tribunal must be to protect the interest of poor and illiterate claimants so that the amount awarded to them by way of compensation serve the purpose and object of recompensing them for the loss occasioned by the tragedy of the accident. If the Tribunal fails to protect such claimants and if the amount awarded to them is frittered away, the very object of awarding compensation will be defeated. One of the ways of protecting such applicants is to direct investment of the amount awarded to them so that they may receive a steady income from the investment and the corpus may remain intact.

7. The Division Bench further observed that it was not sufficient to award compensation to the victim of the accident or his legal representatives. It was also duty of the Tribunal to ensure that the amount awarded is not frittered away. The Division Bench observed that it must be remembered that lump sum compensation is paid to the claimants who are either victims of the accident or their legal representatives by applying an appropriate multiplier with a view to providing for his or their future. In other words, instead of spreading out the amount of compensation over a number of years having regard to the estimated future life span, as a measure of convenience, lump sum payment is ordered. If the whole or substantial part of the compensation money is paid to claimants who have never handled such huge amounts in their lives, there is danger of their frittering away the amount for want of fiscal discipline in their lives. If the amount is squandered away,

³1982 (1) 23 Guj LR 756

⁴1982 (1) 23 Guj LR 756

which in all probability may happen, the socio-economic objective intended to be achieved by the award of compensation will be wholly defeated. The Division Bench further observed that it was of the opinion that in such cases it was imperative on the Claims Tribunal to protect such claimants, no matter they are adults, by directing the investment of lump sum compensation awarded to them. In para 6 of the reported decision, the Division Bench laid down certain guidelines, which read as follows :

"(i) The Claims Tribunal should in the case of minors invariably order the amount of compensation awarded to the minor invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may however be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases for any movable or immovable property, such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding an existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimants belong and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

- (v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;
- (vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;
- (vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;
- (viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated."

8. *Union Carbide Corporation v. Union of India*⁵, decided on October 3, 1991. It was a case decided by a Constitution Bench of Five Hon'ble Judges of the Supreme Court. After giving direction as regards setting up of adequate machinery for adjudication of claims

⁵(1991) 4 SCC 584

and determination of the amount of compensation, and appointment of Claim Commissioners, the Hon'ble Supreme Court made the following observations in para 211 of the reported decision (Para 105, at p. 311 of AIR):

"In the matter of disbursement of the amounts so adjudicated and determined it will be proper for the authorities administering the funds to ensure that the compensation amounts, wherever the beneficiaries are illiterate and are susceptible to exploitation, are properly invested for the benefit of the beneficiaries so that while they receive the income therefrom they do not, owing to their illiteracy and ignorance, deprive themselves of what may turn out to be the sole source of their living and sustenance for the future. We may usefully refer to the guidelines laid down in the case of *Muljibhai Ajarambhai Harijan v. United India Insurance Co. Ltd*⁶. We approve and endorse the guidelines formulated by the Gujarat High Court. Those guidelines with appropriate modifications, could usefully be adopted. We may briefly recapitulate those guidelines.

(Thereafter the Hon'ble Supreme Court has reproduced the guidelines laid down by Division Bench of Gujarat High Court in the case of *Muljibhai* (supra). These guidelines have been stated hereinabove. Hence not repeated.)

9. *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas*⁷,

It was a case in which a person aged about 38 years died in an unfortunate accident which occurred on February 19, 1984. The Motor Accidents Claims Tribunal, Alleppey, awarded ₹ 58,760/- to the claimants. On appeal by the claimants, the High Court enhanced the amount of compensation to ₹ 2,64,000/-. The Kerala State Road Transport Corporation carried the matter in

appeal before the Supreme Court. The Supreme Court held that the multiplier method is logically sound and legally well-established. The Supreme Court further held that this multiplier method was required to be adopted and applied. The Supreme Court further held that proper method of computation is the multiplier method and any departure except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Applying the multiplier method and having regard to the facts of the case, the Supreme Court reduced the amount of compensation awarded to ₹ 2,25,000/- to the claimants. In para 17 of the reported decision, the Supreme Court has observed as follows (at p. 1637 of AIR) :

"In a case of compensation for death it is appropriate that the Tribunal do keep in mind the principles enunciated by this Court in *Union Carbide Corpn. v. Union of India*⁸, in the matter of appropriate investments to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptible to exploitation. In that case approving the judgment of the Gujarat High Court in *Muljibhai Ajarambhai Harijan v. United India Insurance Co. Ltd.*⁹, this Court offered the following guidelines.

(The guidelines laid down by the Gujarat High Court in the case of Muljibhai (supra) have been reproduced by the Hon'ble Supreme Court. These guidelines

⁶(1982 (1) 23 Guj LR 756)

⁸(1991) 4 SCC 584

⁷decided on January 6, 1993, reported in 1994 Acc CJ 1

⁹1983 Acc CJ 57

have been stated hereinabove. Hence not reproduced.)

After referring to the guidelines the Hon'ble Supreme Court has observed that these guidelines should be borne in mind by the Tribunals in the cases of compensation in accident cases.

10. *New India Assurance Co. Ltd. v. Kamlaben*¹⁰, by a Full Bench of this Court (Coram : M. B. Shah, C.V. Jani and A. N. Divecha, JJ.) In that case the contention raised by the Insurance Company was that in case of a person travelling by goods vehicle, even by paying fare the Insurance Company would not be liable to indemnify the insured or in any case its liability under the statutory insurance coverage was limited. In view of this contention, certain questions were referred to larger Bench. While deciding the case, the Full Bench also decided the issue as to whether the compensation amount should be paid by lump sum or by periodical installments. It was submitted that the amount of compensation awarded to the victims or the dependents, in most of the cases, is frittered away because of various reasons including illiteracy or ignorance on the part of the victims towards their rights, influence of middlemen and heavy expenses in the litigation including fees for the Advocates. Therefore, it was submitted that the Tribunal should be directed to award the amount of compensation in such a manner that it should not be a lump sum amount but it should be periodical payment on the basis of loss of earnings by the victim or dependants. The Full Bench held that "in this country, there would not be a legal hitch in paying compensation by periodical installments because Section 110-B (as it was) of the Motor Vehicles

Act, 1939 and Section 168 of the Motor Vehicles Act, 1988 specifically empower the Claims Tribunal to award just compensation. The phrase 'just compensation' would include payment of compensation by periodical installment".

11. Thereafter the Full Bench referred to the following decisions :

(1) *Bishan Devi v. Sirbaksh Singh*¹¹, *Mulhibhai v. United Insurance Co. Ltd*¹², *New India Assurance Co. Ltd. v. Mada-pati Naramma*¹³, *Srisailam Devasthanam v. Bhavani Parmilamma*¹⁴, *G. M. Orissa S.R.T. Corporation v. Maheshwar Rout*¹⁵, *M/s. Shivalik Agro Poly Products Ltd. v. Jagdish*¹⁶,

After referring to the aforesaid decisions, the Full Bench in para 38 of the reported decision held as follows (para 39, at p. 190 of AIR) :

"In view of the aforesaid discussion and the view expressed by the Supreme Court in the case of *Bishan Devi*, AIR 1979 SC 1862 (supra) by this Court in the case of *Muljibhai* (1982 (1) 23 Guj LR 756) (supra) and by other High Courts, as stated above it would be in the interest of justice to direct the Motor Accident Claims Tribunal to award compensation amount by periodical installments only and not in lump sum. This type of order is required to be passed to see that :

- (i) the major part of the compensation amount reaches the victims or their dependants;
- (ii) large part of the compensation amount is not frittered away;

¹⁰ decided on April 26, 1993 : (reported in AIR 1993 Guj 171)

¹²1982 (1) 23 Guj LR 756;(3)

¹¹ AIR 1979 SC 1862; (2)

¹³ AIR 1990 Andh Pra 11; (4)14 AIR ¹⁴1983

Andh Pra 297; (5)

¹⁶ AIR 1986 Him Pra 4

¹⁵ AIR 1983 Ori 128; (6)

- (iii) victims or their dependants are not again left at the mercy of the society; and
- (iv) the amount, which is paid by the nationalised Insurance Companies, serves its purpose and the socio-economic object of the legislation is not defeated."

In para 40-B of the reported decision, the Full Bench gave directions laying down the guidelines which reads as follows (AIR 1993 Guj 171 at p. 191 (FB)):

"Further having regard to the prevailing malpractices in the case of payment of compensation in lump sum, it would be just and proper to slightly modify the directions for depositing the amount in the nationalised Banks given in the case of *Muljibhai*, 1982 (1) 23 Guj LR 756 (supra), as under :

- (i) Normally, the Claims Tribunal should direct the Insurance Company to pay the amount of compensation periodically by quarterly instalments by calculating interest at the rate of 15% per annum on the total amount of compensation determined by it and to pay the principal amount at the end of 10 to 20 years having regard to the facts of each case.

(ii) A further provision be made in case where the compensation amount is large or in case the claimants are illiterate and/or poor to pay the corpus after the prescribed period by 2 or 3 instalments depending upon the circumstances of each case.

(ii-a) It would be open to the Insurance Company to make the necessary arrangement through the General Insurance Corporation of India for making payment of annuity or periodical instalments as per the direction of the Motor, Accidents Claims Tribunal.

(iii) If the concerned Insurance Company or the General Insurance Corporation of India is not ready and willing to pay the amount in the aforesaid manner, it may be directed to deposit the amount of compensation with the Life Insurance Corporation of India. The Life Insurance Corporation of India may be directed on receiving the said deposit, to provide for payment by an appropriate annuity to the claimants. Learned Advocate Mr. B. R. Shah, after obtaining instructions from the concerned authority, has stated that the Life Insurance Corporation of India is having a large net-work and would pay the amount with interest by appropriate scheme of annuity.

(iv) In the case of MINOR claimants, the Tribunal shall order that the amount of compensation shall be kept with the Insurance Company till the minor attains the age of 21 years but in any case not before expiry of 10 years from the date of the award.

(v) In personal injury cases if treatment is necessary the Claims Tribunal on being satisfied about the same may after recording reasons for such satisfaction direct the Insurance Company to pay such amount to the claimant as is necessary for incurring the expenses, for such treatment. This permission should be granted strictly after verifying the necessary medical expenses.

(vi) These directions would also apply in the case of liability arising under Section 92 of the Act or under Section 140 of the Motor Vehicles Act, 1988 -- that is to say, in case of 'no fault liability'.

These guidelines for keeping the amount with the Insurance Company or depositing it with the Life Insurance Corporation of India are not exhaustive. It would be open to the Claims Tribunal to find out such other modes of investment and disbursement of compensation by annual installments ranging from 10 years to 20 years depending upon the facts and circumstances of each case with a specific direction that in no set of circumstances the claimants or their authorized agents would be permitted to withdraw the corpus."

12. It is in the aforesaid background of the case law that the questions arising in this reference are required to be examined and answered.

Is the reference not competent ?

13. However, before examining the questions and answering the same, we may deal with the submission made by the learned Counsel for the appellant-ST Corporation --that reference is not competent. In his submission, in the facts of the case, the questions referred to the Full Bench do

not arise. It was submitted by him that ordinarily the Court decides the issue arising before it: It was submitted that for the purpose of deciding the application submitted by the opponent (Civil Application No. 3398 of 1994), the correctness or otherwise of the Full Bench decision of this Court in the case of New India Assurance Co. Ltd. (supra) is not required to be decided. Hence the reference is incompetent.

14. The submission cannot be accepted. While deciding the application submitted by the claimant, the High Court is required to decide as to whether fixed deposit be renewed or not and if renewed for how much period ? The High Court is also required to decide as to whether the opponent-claimant be paid the accrued interest on the fixed deposit ? Simply because the appellant has no objection to the prayers being granted, it cannot be said that there is no need to refer the case to a larger Bench. By consent of the learned Advocates appearing for the parties, the Court cannot disregard the guidelines laid down by the Hon'ble Supreme Court. The Court cannot ignore the conflict between the decisions of the Full Bench of this Court and that of the Hon'ble Supreme Court. Concession made by the Advocates appearing for the parties does not confer jurisdiction on the Court to ignore the mandate of Article 141 of the Constitution of India, which inter alia provides that the law declared by the Supreme court shall be binding on all courts within the territory of India. If the argument is accepted, it would amount to saying that whatever be the guidelines laid down by the Hon'ble Supreme Court, the Court may follow the guidelines laid down by the Full Bench of this Court, notwithstanding the fact that there may be conflict between the two. Hence the submission cannot be accepted.

15. In the instant case, factual position may be examined and answered. The guidelines laid down by the Full Bench of this Court are so comprehensive that it covers all the types of claims whether the claimant is minor or adult, whether literate or illiterate or is poor or rich or whether widow or married female. As per the guidelines given by the Full Bench, the Claims Tribunals are required to direct the Insurance Company to pay the amount of compensation periodically by quarterly instalments by calculating interest at the rate of 15% on the total amount of compensation determined by it and to pay the principal amount at the end of 10 to 20 years having regard to the facts of each case. Though the appellant herein is ST Corporation, with suitable modification, these guidelines will have to be applied to the appellant also. In fact, the learned Counsel for the appellant conceded that in case of ST Corporation, the guidelines given by the Full Bench of this Court qua Insurance Company would be applicable. While deciding the question as to whether the fixed deposit should be renewed or not and, if renewed, for how much period; and as to whether interest accrued thereon to be paid to the claimant or not, the Division Bench of this Court would be required to take into consideration the guidelines laid down by the Full Bench of this Court. Simply because the parties concede that the prayer made by the other side be granted, the Court cannot ignore the Full Bench decision.

Need for reference -- Judicial Comity :

16. It is axiomatic to say that the law laid down by the Hon'ble Supreme Court is binding to all courts in India. Therefore it may be canvassed that if there is decision of the Supreme Court laying down different guidelines and the decision of the Supreme Court was not brought to the notice of the Full Bench, then in that case the guidelines laid down by the Hon'ble Supreme Court should be followed. Logically this is true. But as a matter of practice, as laid down by the Hon'ble Supreme Court in the case of *Somabhai Mathurbhai Patel v. New Shorrocks Mills, reported in*¹⁷ judicial comity demands that in such situation the matter be referred to a larger Bench. In the case of *Somabhai* (supra), learned single Judge of this Court had rejected the ratio of the decision of another learned single Judge of this very High Court by stating that the attention of the learned single Judge was not invited to the decision of the Supreme Court which had an impact on the point under examination. The Hon'ble Supreme Court disapproved this approach and observed that "judicial comity demands and this Court often reiterated that in that event the matter should be referred to a larger Bench". It is for this reason that the Division Bench consisting of B. N. Kirpal, C.J. and R. K. Abichandani, J. has made this reference to a larger Bench of five Judges. In view of this settled legal position, the submission that there was no reason for the Division Bench to refer the case to a larger Bench cannot be accepted.

Relevant Statutory Provision.

(a) History :

17. In the Motor Vehicles Act, 1939 Section 100 to Section 110-F were introduced sometime in the year 1957. Thereafter the State Governments constituted Claims Tribunal for expeditious disposal of motor accident claims. However, general law applicable for deciding the claims is only the Common Law and the Law of Torts, AIR 1977 SC 1248. Section 110B of the 1939 Act empowers the Claims Tribunal to make an award, determine the amount of compensation which appears to be just. Section 110B of the Act provided for appeals against the award of a Claims Tribunal to the High Court. Section 110E of the Act provided for recovery of money due from any person under an award as arrear of land revenue. Section 110F created bar of jurisdiction of Civil Courts where any Claims Tribunal has been constituted for the area concerned to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area.

(b) Motor Vehicles Act, 1988.

¹⁷1983 Guj LH 273

The Motor Vehicles Act, 1939 has been repealed and new Act -- Motor Vehicles Act, 1988 has been enacted which has been brought into force with effect from July 1, 1989.

Chapter XII of the Act makes provisions with regard to Claims Tribunal. The provision is almost on similar pattern as contained in Motor Vehicles Act, 1939. However, some changes made in the provisions of Section 168 which corresponded to old Section 110B, be noted. Section 168 provided for award of the Claims Tribunal. Sub-section (1) is similar to the

provisions of Section 110B. Sub-section (2) and Sub-section (3) have been added to the provisions of Section 168. By Sub-section (2), Tribunal has been enjoined with duty to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award. Sub-section (3) of Section 168 reads as follows :

" 168(3). When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

Section 173 of the 1988 Act provides for appeals wherein some changes have been made. First proviso to Section 173(1) provides that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-Five thousand rupees or fifty per cent, of the amount so awarded, whichever is less. Second proviso to the same sub-section provides for condonation of delay in filing the appeal. Sub-section (2) of Section 173 inter alia provides that no appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than ten thousand rupees. Section 174 of the Act provides for recovery of money from insurer as arrear of land revenue. By Section 217 of the Act the Motor Vehicles Act, 1939 has been repealed.

(c) Rules :

The State Government of Gujarat has framed rules under the appropriate provisions of the Motor Vehicles Act, 1988 which are called the Gujarat Motor Vehicles Rules, 1989. Rule 232 inter alia enjoins duty upon the Claims Tribunal to obtain receipt from the claimant upon payment of the amount of compensation. It also enjoins duty to forward such receipts to the concerned insurer or the owner of the vehicle, as the case may be, for the purpose of record. Rule 233 provides for enforcement of an award of Claims Tribunal. Subject to the provisions of Section 174 of the Act it confers powers upon the Claims Tribunal of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908 as if the award were a decree for the payment of money passed by such court in a civil suit.

(d) Relevant provisions of the Constitution of India :

Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Article 144 of the Constitution provides that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

18. Position that emerges from the case law :

Date of decision of relevant cases may be noted :

(1) April 21, 1982 : Division Bench of this Court decided the case of Muljibhai (1982 (1) 23 Guj LR 756) (supra), wherein guidelines have been laid down as regards disbursement and investment of the amount of compensation.

(2) October 3, 1991 : Hon'ble Supreme Court decided the case of Union Carbide Corporation (Bhopal Gas Tragedy case) (AIR 1992 SC 248) and approved and endorsed the guidelines formulated by Division Bench of this Court in the case of Muljibhai.

(3) January 6, 1993 : Hon'ble Supreme Court decided the case of General Manager, Kerala State Road Transport Corporation (supra) and reiterated the approval of the guidelines formulated by Division Bench of this Court in the case of Muljibhai. The Hon'ble Supreme Court also observed, "these guidelines should be borne in mind by the Tribunals in the cases of compensation in accident cases".

(4) April 26, 1993 : Full Bench of this Court decided the case of New India Assurance Co. Ltd. (supra) and laid down guidelines.

19. When the Full Bench laid down the new guidelines, it proceeded on the footing that "it would be just and proper to slightly modify the directions for depositing the amount in nationalized banks given in the case of Muljibhai by Division Bench of this Court". It was not brought to the notice of the Full Bench that on April 26, 1993 (reported in AIR 1993 Guj 171) when it proceeded to "slightly modify" the directions given by the Division Bench of this Court, the Hon'ble Supreme Court had already approved and endorsed the guidelines formulated by the Division Bench of this Court in the case of Union Carbide Corporation (supra) and reiterated the same in the case of General Manager, Kerala State Road Transport Corporation (supra). It was not brought to the notice of the Full Bench that the guidelines given by Division Bench of this Court in the case of Muljibhai (1992 (1) 23 Guj LR 756), by that time, had not remained the guidelines of the Division Bench of this Court, but had become the guidelines laid down by the Hon'ble Supreme Court. Therefore in effect what the Full Bench was persuaded to do by the learned Advocates appearing for the parties was to modify the guidelines laid down by the Hon'ble Supreme Court. Had the decisions of the Hon'ble Supreme Court in the case of Union Carbide Corporation (supra) and in the case of General Manager, Kerala State Road Transport Corporation (supra) been brought to the notice of the Full Bench, we are sure, the Full Bench would have certainly not ventured to modify the guidelines laid down by the Hon'ble Supreme Court. Thus it is evident that the guidelines laid down by the Full Bench of this Court in the case of New India Assurance Company (supra) is per incuriam, i.e. in ignorance of the decision of the Hon'ble Supreme Court.

20. It may also be noted that all the relevant provisions of the statute were not brought to the notice of the Full Bench when it decided the case of New India Assurance Company (supra). Attention of the Full Bench was not drawn to the provisions of Section 168(3) of the Act, which, inter alia obliges a person who is required to pay any amount in terms of an award to deposit the entire amount with the Tribunal within thirty days from the date of announcement of the award

by the Tribunal. This provision was not there in old Section 110B of the 1939 Act. Again, Rule 232 enjoins duty upon the Tribunal to obtain receipt from the claimant upon payment of the amount of compensation. The Tribunal is required to send this receipt to the insurer or the owner of the vehicle for the purpose of record. Thus the provisions of the Act and the Rules were not brought to the notice of the Full Bench.

21. In the guidelines laid down by the Hon'ble Supreme Court and the guidelines laid down by Full Bench of this Court, there is conflict. It is not possible to reconcile the same. As per. the guidelines laid down by the Full Bench of this Court, the insurance company which may have become liable to pay the amount- of compensation is required to retain the amount with it. It is obliged to pay the same to the claimants periodically with interest at the rate of 15%. This is not the case in the guidelines laid down by the Hon'ble Supreme Court. The guidelines laid down by the Hon'ble Supreme Court requires that the amount of compensation should be deposited in the Tribunal. Thereafter it is for the Tribunal to regulate disbursement and investment of the amount. Moreover, the guidelines laid down by the Hon'ble Supreme Court take care of all types of cases, wherein even the insurance company may not have been held liable to make payment of the compensation; while, in the case of the guidelines laid down by Full Bench of this Court, the guidelines are silent in cases where the insurance company is not made liable to make payment of the amount of compensation and only the owner of the vehicle or the driver is made liable to pay the compensation.

22. The guidelines issued by the Hon'ble Supreme Court take care of the provisions of Section 168(3) of the Motor Vehicles Act, 1988; while, as indicated hereinabove, attention of the Full Bench has not been drawn to the provisions of Section 168(3) of the Act, which requires a person liable to make payment of the amount of compensation to deposit the amount of compensation with the Tribunal within thirty days from the date of announcement of the award.

23. In the guidelines laid down by the Hon'ble Supreme Court emphasis is to protect the interests of minor claimants and the interest of illiterate and semi-literate, as well as poor, claimants. The guidelines laid down by the Hon'ble Supreme Court also apply to literate and other claimants. But in such cases discretion is left with the Tribunal, indicating the circumstances and the manner in which the discretion may be exercised. While in the guidelines laid down by the Full Bench, it is difficult to read that any such discretion is left with the Tribunal. For the aforesaid reasons there is conflict between the guidelines laid down by the Hon'ble Supreme Court in the case of Union Carbide Corporation (supra) and again in the case of General Manager, Kerala State Road Transport Corporation (supra). Moreover, this conflict is irreconcilable inasmuch as it would be impossible to implement both the guidelines simultaneously.

Other Contentions :

24. It was contended that the law of Tort is Judge-made law. On this basis it was submitted that

the concept of periodical payment of amount of compensation adopted by the Full Bench of this Court be reiterated and reaffirmed. It was further submitted that it would prevent "prevailing malpractices in the case of payment of compensation in lump sum" as observed by the Full Bench. In this connection learned Counsel appearing for the appellants and learned Counsel appearing for the intervenors have cited various decisions of the Hon'ble Supreme Court. They have also relied upon certain standard books on the subject. However, we are afraid it would not be possible for us to enter into this field. Once the Hon'ble Supreme Court has laid down the guidelines in the subject-matter of disbursement and investment of the amount of compensation, the same has to be followed by this Court. It may be noted that the Tribunals and the Insurance Companies are also bound by the decisions of the Supreme Court. Again, as provided under Article 144 of the Constitution of India, all authorities, civil and judicial, in the territory of India are bound to act in aid of the Supreme Court. Here reference may be made to decision of the Supreme Court in the case of *Asstt. Collector of Central Excise, Chandan Nagar v. Dunlop India Ltd., reported in*¹⁸ In para 6 of the reported decision the Supreme Court has referred to the case of *Cassel and Co. Ltd. v. Broome*¹⁹, and observed as follows :

"In the hierarchical system of Courts which exists in our country, it is necessary for each lower tier, including the High Court, to accept loyally the decisions of the higher tiers."

In the same paragraph the Supreme Court has further observed that the better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system.

25. In view of the aforesaid settled legal position it is not open to us to consider as to whether the guidelines issued by the Hon'ble Supreme Court are required to be modified. It is an admitted position that against the decision of the Full Bench, appeal has been preferred before the Hon'ble Supreme Court and the same has been admitted. If the Hon'ble Supreme Court thinks it fit to modify the guidelines, it may do so while deciding the appeal preferred against the decision of the Full Bench of this Court. It is not for this Court to claim 'better wisdom' than what has been expressed by the apex Court of the country and thereafter undertake the task of modifying the guidelines as submitted by the learned Advocates.

26. For the aforesaid reasons, question No. 1 stated in para 1 of the judgment is answered in affirmative. There is conflict between the guidelines laid down by the Hon'ble Supreme Court in relation to disbursement and investment of the amount of compensation awarded in motor accident claims cases, in the case of GM, Kerala State Road Transport Corporation (supra) and the guidelines laid down by Full Bench consisting of three Hon'ble Judges of this High Court in the case of New India Assurance Company Ltd. (supra). Answer to question No. 2 is that there is irreconcilable conflict between the guidelines laid down by the Hon'ble Supreme Court in the case of GM, Kerala State Road Transport Corporation (supra) and the guidelines laid down by the Full Bench consisting of three Hon'ble Judges of this High Court in the case of New India

Assurance Company Ltd. (supra); and the guidelines laid down by the Hon'ble Supreme Court in the case of GM, Kerala State Road Transport Corporation (supra) are required to be followed by this High Court and by all Motor Accident Claims Tribunals in the State. We direct that the application as well as the First Appeal be placed before the Division Bench taking up such matters for deciding the same in accordance with law and the guidelines laid down by the Hon'ble Supreme Court. Reference stands disposed of accordingly.

Reference answered.

¹⁸ AIR 1985 SC 330

¹⁹1972 AC 1027