

PETITIONER:
LILABEN UDESING GOHEL

Vs.

RESPONDENT:
THE ORIENTAL INSURANCE COMPANY LTD.& OTHERS

DATE OF JUDGMENT: 15/03/1996

BENCH:
AHMADI A.M. (CJ)
BENCH:
AHMADI A.M. (CJ)
SINGH N.P. (J)

CITATION:
1996 AIR 1605 1996 SCC (3) 608
JT 1996 (4) 352 1996 SCALE (3)56

ACT:

HEADNOTE:

JUDGMENT:

W I T H
CIVIL APPEAL NO. 4468 OF 1996
(Arising out of SLP (C) No. 14022 of 1993)
Shyamala Shashidharan Nayyar & Ors.
V.
Hemraj Loduram Rajpur & Anr.

W I T H
CIVIL APPEAL NO. 4469 OF 1996
(Arising our of SLP (C) No. 14096 of 1993)
Pramilaben Narendra Bhai Patel & Ors.
V.
Nandubhai Ambalal Thakkar & Ors.

W I T H
CIVIL APPEAL NO. 4470 OF 1996
(Arising out of SLP (C) No. 14784 of 1993)
Ramabhai Shankarbhai Chavda
V.
Ganibhai Ambabhai Vora & Anr.

W I T H
CIVIL APPEAL NO. 4471 OF 1996
(Arising our of SLP (C) No. 14785 of 1993)
Lilaben & Others
V.
Kaji Gulam Nabi Sheikh & Others

W I T H
CIVIL APPEAL NOS. 4472-73 OF 1996
(Arising out of SLP (C) NOS. 14160-61 of 1993)
Kantaben Anil Kumar Patel & Ors.
V.

Gujarat State Road Transport Corporation
& Others

W I T H
CIVIL APPEAL NO. 4474 OF 1996
(Arising out of SLP (C) No. 15273 of 1993)
Shardaben Chandubhai Patel & Ors.

V.
Bachusha Dadusha & Ors.

J U D G M E N T

Ahmadi, CJI

Special leave granted.

The principal judgment that has been impugned in the 8 matters grouped together is the one dated 26.4.1993 in the case of New India Assurance Co. Ltd. v. Kamlaben Sultansinh Hakumsinh Jadav & Others in first. appeal No.61 of 1979 of the High Court of Gujarat 1993 (1) Gujarat Law Reporter 779. The full Bench, in that case, was called upon to decide the following questions referred by the Division Bench:

"(i) What would be the extent of liability of the insurer under Section 95(2) [of the Motor Vehicles Act, 1939] in respect of death or bodily injury to the passengers carried for hire or reward in a truck?

(ii) Which clause amongst (a), (b) or (c) will apply?

(iii) Whether the judgment of the Division Bench in Oriental Fire & General Insurance Co. Ltd. v. Husseinbhai Abdulbhai Sheikh & Ors., First Appeal No.851 of 1977, decided on 26th July 1983, is correctly decided and is correctly followed in some other cases? "

The full Bench reframed the questions and at the end of the adjudication on these points the Court posed to itself the following question:

"Whether compensation amount should be paid in lump sum or by periodical instalments."

The High Court took note of the contention that where lost earnings are still to be anticipated, or where the action is brought by dependents of someone killed in an accident, a large part of the award is for future loss of earning, and it is hard to see how it is appropriate to compensate these by a lump sum payment. A lump sum could be invested, according to this contention, to provide an income or used to purchase an annuity. Another important factor to be considered was that the recipient of the lump sum compensation could be quite inexperienced in the handling of large sums of money, and they may dissipate the money, or fall a prey to confidence tricksters or invest it in reckless and hopeless enterprises. The judgment then goes on refer to the Supreme Court decision in the case of Bishan Devi v. Sirbaksh Singh AIR 1979 SC 1862 and quotes paragraph 21 of that judgment, which is as under:

"The insurance companies are now nationalized and the necessity for awarding lump sum payment to secure the interest of the dependants is no longer there. Regular monthly payments could be made through one of the nationalized banks nearest to the place of residence of the dependants. Payment of monthly instalments and avoidance of lump sum payment would reduce substantially the burden on the insurer and consequently of the insured. Ordinarily in arriving at the lump sum payable, the Court

takes the figure at about 12 years payment. Thus, in the case of monthly compensation of Rs.250 payable, the lump sum arrived at would be between 30,000 and 35,000. Regular monthly payment of Rs.250 can be made from the interest of the lump sum alone and the payment will be restricted only for the period of dependency of the several dependants. In most cases it is seen that a lump sum payment is not to the advantage of the dependants as large Part of it is frittered away during litigation and by Payment to persons assisting in the litigation. It may also be provided that if the dependants are not satisfied with the minimum compensation payable they will be at liberty to pursue their remedies before the Motor Accidents Claims Tribunal.

(Emphasis supplied)"

The High Court then proceeds to refer to its own judgment in the case of Muljibhai v. United India Insurance Co. Ltd. (1982) 23 (1) Guj L R 756, and places reliance on the following part of that judgment:

"We are distressed to note that Claims Tribunals do not realise that it is not sufficient to award compensation to the victim of the accident or his legal representatives, as the case may be, but it is also its duty to ensure that the amount awarded is not frittered away. It must be remembered that lump sum compensation is paid to the claimants who are either the 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 the danger of their frittering away the amount for want of fiscal discipline in their lives. If the amount is squandered away, which in all probability may happen, the socioeconomic objective intended to be achieved by the award of compensation will be wholly defeated. We are, therefore, of the opinion that in such cases

it is 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."

The impugned judgment goes on to say that the court in *Muljibhai's* case (supra) had indicated broad guidelines which the Claims Tribunal should follow while disposing of the claim applications arising under the Motor Vehicles Act, 1939 to scotch complaints of misapplication of compensation money and that as per those guidelines the compensation money should be invested in a nationalized bank as a fixed deposit and the interest thereon should be paid directly to the claimant or his guardian, as the case may be. The court observed that despite the compensation amount being deposited in banks unscrupulous persons by various means could get the money released from the bank thereby frustrating the intention of the Court to protect the interest of the accident victim or the heirs of a deceased in case of a fatal accident. The High Court pointed out that it was necessary to see:

- (i) that the major part of the compensation amount reaches the victims or their dependents;
- (ii) large part of the compensation amount is not frittered away;
- (iii) victims or their dependents are not again left at the mercy of the Society; and
- (iv) the amount, which is paid by the nationalized Insurance Companies, serves its purpose and the socioeconomic object of the legislation is not defeated.

In the concluding paragraph of the judgment, the Court gave the following general directions:

- (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 in each case.
- (ii) 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 necessity of 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'.

The High Court added by way of clarification:

"These guidelines for keeping the amount with the Insurance Companies or depositing it with the Life Insurance Corporation of India are not exhaustive".

At the end of the judgment the learned judges directed to circulate the judgment to all the Claims Tribunals so that the amount of compensation is disbursed as stated above.

All the appeals challenge the judgment in Kamlaben's case as in the respective cases of the appellants orders were passed by the High Court or some Motor Accident Claims Tribunal on the basis of the guidelines laid down regarding the mode of disbursement of the compensation awarded. The writ petition No.716/93 seeking a writ of certiorari for quashing the judgment is filed by way of a public interest litigation for the benefit of the victims of the accidents.

Notices were issued to the Chairman, General Insurance Corporation, in view of the statement having been made on its behalf before the full bench of the High Court. Notice was also issued to the Supreme Court Legal Aid Committee. A stay against the impugned judgment was declined. However, a limited stay was granted by order dated 1.10.1993 to the effect that the impugned order will not deter payment to which the victim/legal heir of the victim becomes entitled under the statutory provisions of no-fault liability.

Before proceeding to enumerate the various grounds on which the impugned judgment is challenged, it would be proper to have a look at the guidelines laid down in the case of Muljibhai (supra). The following part of that judgment needs to be quoted for the purpose:

"6. Having regard to the fact that day in and day out thousands of rupees are paid by way of compensation to various categories of claimants, we think that before we part, we may indicate a few broad guidelines which the Claims Tribunals may follow while disposing of claim applications arising under the Motor Vehicles Act, 1939, to misapplication of compensation money:

(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 of 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 rouse 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 and 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 claimant belongs 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 about the same, which shall be recorded 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 call 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."

<sle>

This Court in the case of Union Carbide Corporation v. Union of India (1991) 4 SCC 584 (686) referred to the guidelines laid down in Muljibhai's case in laying down guidelines for disbursement of compensation to the gas victims of the well known Bhopal disaster. The guidelines laid down in Union Carbide's case were in spirit quite similar to those laid down in Muljibhai's case. The Court, however, did not include the clause regarding literate persons' compensation also to be given the same treatment in case the court found it necessary to do so to protect the compensation awarded to them.

One can easily notice the major shift in ideas in the impugned judgment. The thrust in the impugned judgment is on the concept of annuity so as to ensure periodic payment of a fixed amount and to prevent the awarded sum in lump sum falling into the hands of the claimant as long as possible. In order to ensure the periodic payment, which according to the judgment should be quarterly interest calculated at the rate of 15% on the total compensation amount, the insurance company itself has been made liable to make the necessary investment either in its own business or in the business of the General Insurance Corporation or that of the Life Insurance Corporation. The impugned judgment has shown further caution for minors who should wait till they are at least 21 and in any case for 10 years from the date of the award. It can be seen that the periodic payment is insisted upon for all claimants irrespective of their capacity to take care of large sums of money. Further, the arrangement described above was insisted upon also for payment of the small amount that is generally available on no-fault liability primarily to meet the immediate needs of the victims/heirs.

The minimum waiting period for 10 years before the claimant could be entitled to receive the compensation money awarded has been challenged as having the effect of depriving the claimant of his right to compensation. Such a procedure is said to be arbitrary and unreasonable and hence violative of fundamental rights under Article 14 and right to property under Article 300(A) of the Constitution. Entrusting the capital amount to the insurance company has also been opposed. In the first place insurance companies having already contested the claim petition tooth and nail are likely to have lost the confidence of the claimants. In the second place, the nationalized status of the insurance company may or may not continue in future when it may become difficult to assume that the corpus can be safely left with them. The inflexibility of the rule, it is said, is likely to cause hardships in individual cases particularly when the claimant would be needing the amount for reimbursement of the medical expenses as well as other expenses incidental thereto. It is further said that those who are literate and wise should be given the charge of the compensation amount at the very outset because they may invest the amount in a more profitable way than what is suggested by the court. The payment of lump sum is also favoured by the appellants as

the amount may help the victim/injured or the heir of the deceased in making arrangement for a self-employing establishment which may be a better arrangement than receiving a fixed annuity periodically. So far as the minors are concerned detaining the payment till the claimant reaches the age of 21 years or at least for a minimum period of 10 years would amount, in particular cases, to detain the money till the claimant reaches the age of nearly 30 years. This again is challenged as unreasonable. Further they say that compensation amount is calculated on the basis of the multiplier method in which one-third of the expected loss of estate is deducted and therefore unless the compensation so awarded is paid in lump sum the interest alone will be illusory. Further, according to them the amount of time lost in litigation will never be compensated if the victims are to receive only the interest amount.

The claimants have further said that the guidelines laid down in Muljibhai's case (supra) having been approved by the Supreme Court in the Union Carbide case (supra), there was no necessity to lay down the directives in the impugned judgment and further that the questions referred to the Full Bench by the Division Bench of the High Court did not include the question of disbursement of the awarded amount and hence the determination of the guidelines itself is beyond the jurisdiction of the High Court.

Over and above the general challenges to the impugned judgment, each appellant has attempted to show why in his/her individual case the guidelines operate in a harsh and unjust manner.

Sometime after the arguments in the matters were closed a Division Bench of the Gujarat High Court took note of the conflict between the guidelines laid down in Muljibhai's case (supra) as approved by this Court in Union Carbide case (supra) and referred the question to a five-Judge Bench. The five-Judge Bench also took note of the observation of this Court in the case of General Manager, Kerala State Road Transport Corporation v. Susamma Thomas & Ors. reported in 1994 ACJ 1 = (1994) 2 SCC 176 in which its guidelines in the Union Carbide case were reiterated. The five-Judge Bench in Jayantilal Ambalal Parmar v. Gujarat State Road Transport Corporation & Anr. (1994) 35 (2) Gujarat Law Reporter 1308), observed that the reference was to resolve the following questions :

"(1) 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 General Manager, Kerala State Road Transport Corpn. Vs. Susamma Thomas & Ors., reported in 1994 ACJ 1 (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. Vs. Kamlaben & Ors., reported in 1993 (1) GLR 779?

(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?

The five judge Bench came to the conclusion that the decision of this Court in Union Carbide case (supra) wherein the guidelines laid down in Muljibhai's case were approved had not been brought to the notice of the three-Judge Bench which passed the impugned judgment i.e. the one in Kamlaben's case. It also noticed that the fact that the same guidelines had been reiterated in the Kerala State Road Transport Corporation case had also not been brought to the notice of the three-Judge Bench. The five-Judge Bench of the High Court concluded that there was a conflict in the guidelines laid down by this Court and those laid down by the three-Judge Bench. It observed :

"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."

(See Jayantilal Ambalal Parmar v. Gujarat State Road Transport Corporation & Anr. (1994) 35 (2) Gujarat Law Reporter 1308).

The five-Judge Bench concluded saying that the guidelines laid down by the Supreme Court as indicated above have to be followed by all the Motor Accident Claims Tribunals. Thus, the position in law as it stood before the decision rendered by the three-Judge Bench of the High Court stands restored.

It may also be mentioned that before us both the General Insurance Corporation and the Life Insurance Corporation expressed their inability to work out and operate the annuity scheme proposed by the three-Judge Bench of the High Court and further expressed their inability to grant the proposed interest rate as it may conflict with Reserve Bank of India directives that may ensue from time to time. They too, therefore, expressed their inability to operate the scheme. Counsel for the life Insurance Corporation clarified that when its counsel gave the consent before the three-Judge Bench, it did not visualize the various operational difficulties likely to arise in the implementation of the scheme proposed by the three-Judge Bench of the High Court. Thus, both the General Insurance Corporation and the life Insurance Corporation feel that the said scheme is unworkable and fraught with several insurmountable difficulties. We too are of the view that the scheme may throw up many operational difficulties. However, now that the larger bench of the High Court has restored the original position, nothing more is required to be done. If any loopholes appear in the implementation of the guidelines laid down in Muljibhai's case, they can always be plugged consistently with the guidelines.

Before we part we must observe that even though the guidelines laid down in Muljibhai's case have been approved and applied by this Court in the aforementioned two cases, many Motor Accidents Claims Tribunals and even some

of the High Courts in other parts of the country do not follow them. We are also told that in claims that are settled in or outside the Court or Tribunal, including Lok-Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between the parties the Court/Tribunal must apply these guidelines. We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed Deposit Receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the Court/Tribunal which ordered the deposit. This will eliminate the practise of taking loans which may be upto 80% of the amount invested and thereby defeating the very purpose of the order. We do hope that the Courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. We are sure that the Courts/Tribunals will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the Courts/Tribunals.

There is no need for any further discussion in the matter. The Writ Petition (Civil) No.716/93 filed by the Motor Vahan Durghatana Sangathan, Nadiad and others has become infructuous and is, therefore, so disposed of. The appeals arising out of special leave petitions are allowed accordingly. Further orders regarding disbursement etc. to be obtained from the concerned Tribunals/High Courts. No costs.