

(2008) 07 GUJ CK 0098
In the Gujarat High Court
Case No : First Appeal No. 2668 of 1996

New India Assurance Co. Ltd.

APPELLANT

Vs

Meenaben B. Dhangar and Others

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22 , Order 41 Rule 33, 35A
Consumer Protection Act, 1986 — Section 18
Motor Vehicles Act, 1988 — Section 146(1), 147 , 147(1)

Citation : (2008) 3 GLH 173

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Sunil B. Parikh, for the Appellant; D.C. Sejpal, for Defendants 1-3 and Kiran Pandey, AGP for Defendant 6, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Sunil B. Parikh for the appellant Insurance Company, learned Advocate Mr. Divyesh C. Sejpal for the respondents No. 1 to 3. Respondent No. 4 has expired and except respondent No. 1 to 3, there are no other heirs and legal representatives of respondent No. 4 as submitted by the learned Advocate Mr. Sejpal before this Court under the instructions from his client. Heard Kiran Pandey, learned AGP for respondent No. 6. Respondent No. 5 has been served but he has not appeared before this Court either in person or through an advocate.

2. Through this appeal, the appellant New India Assurance Co. Ltd. has challenged the award made by Claims Tribunal Bhavnagar in MACP No. 58 of 1992 below Exh. 47 dated 18th April, 1996 wherein Claims Tribunal, Bhavnagar has awarded compensation of Rs. 4,04,000.00 in favour of the respondents claimants with 12 per cent interest thereon by holding joint and several liability of the appellant Insurance Company and respondent No. 6 State Government - Executive Engineer, Irrigation Department.

3. Learned Advocate Mr. Parikh for the appellant has raised contention that the deceased was not a passenger covered by the policy. In support of his submission, reliance was placed by him on the decision of the apex court in case of Ramashray Singh v. New India Assurance Co. Ltd. reported in 2003 AIR SCW 3601 and submitted that in the said decision, the apex court has considered Section 147(1)(b) and proviso thereto and held that the words "any person" or "passenger" occurring in Section 147, though are of wide amplitude, do not cover employees other than those mentioned in proviso to Sub-section (b). Mere mention of word "cleaner" in insurance certificate describing seating capacity of vehicle does not mean that seat cleaner/khalasi was therefore a passenger. Plea that policy being comprehensive one covers all risks was negated in the said decision. Relying upon the aforesaid decision, learned advocate Mr. Parikh submitted that these contentions were raised by the insurance company before the claims tribunal but the claims tribunal has committed an error while coming to the conclusion that if any laborer was sitting in the vehicle and if it is not covered by the provisions of the Workmen's Compensation Act, MV Act, 1988 is applicable and such person can be considered to be a third party and any person who has been sitting in the vehicle is considered to be third party and insurance company is liable to pay compensation to the third party. He submits that the aforesaid finding is contrary to the statutory provisions itself and also contrary to the law laid down by the apex court from time to time and, therefore, findings given by the claims tribunal to that effect are required to be quashed and set aside.

4. Learned Advocate Mr. D.C. Sejpal appearing for the respondents claimants submitted that looking to the panchanama, the deceased was hit by tanker and that is how accident occurred and he expired but the tribunal has committed gross error in not appreciating the panchanama. He further submits that the tribunal has committed error in holding while relying upon the oral evidence that the deceased was sitting in tanker along with the driver of the tanker.

5. According to the learned AGP Ms. Kiran Pandey appearing for respondent No. 6 State, opponent No. 1 driver was unauthorizedly taking tanker and he was in drunken condition as per the averments made in the written statement filed by the State before the claims tribunal and deceased was sitting with the driver of the tanker and due to accident occurred, he died. No doubt, he was an employee working as operator with the State authority. She also emphasized that the deceased was travelling unauthorizedly with the driver in the tanker without permission of the State Authority though he was working on the post of operator of respondent No. 6. Except these submissions, no other submission was made by Ms. Pandey before this Court and no decision was cited by her in support of the submissions made by her as recorded hereinabove.

6. I have considered the submissions made by the learned advocates for the respective parties. I have also perused the impugned award made by the claims tribunal. This appeal is filed by the Insurance Company against the impugned

award.

7. Looking to the facts emerging from the record, according to the discussion made by the claims tribunal, one fact is very much clear that the deceased was travelling in tanker along with the driver and because of the rash and/or negligent driving of the tanker by the opponent No. 1, accident took place wherein the tanker had turned turtle, deceased expired. According to the State Government, against opponent No. 1, driver of the tanker, departmental inquiry was initiated by the State Authority because he was unauthorizedly taking tanker for some other purpose.

8. In view of this back ground of the matter, ultimate question is that who is required to pay compensation to the claimants. Insurance Company is raising legal contention that according to the policy issued by the insurance company, risk of the deceased is not covered because he was not a third party as required u/s 147 of the MV Act, 1988. Insurance Company has also submitted that the insurance company is liable to make payment of compensation only to third party and not to any other person unless risk of such person is covered by paying additional premium to the insurance company and looking to the record, produced by the respective parties, risk of deceased not covered because he was not third party covered by Section 147 of the MV Act, 1988. However, finding given by the claims tribunal holding the insurance company liable to make payment of compensation is misconception of law and same are therefore required to be corrected in light of the decision of the apex court as aforesaid. I have considered the decision cited by learned Advocate Mr. Parikh. Relevant observations made by the Hon"ble apex court in Ramashray Singh v. New India Assurance Co. Ltd. reported in 2003 AIR SCW 3601 are reproduced as under:

The phrases "any person" and "any passenger" occurring in Clauses (i) and (ii) of Sub-section (b) to Section 147(1) are of wide amplitude. However, the proviso to the sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured, in other words, if the "person" or "passenger" is an employee, then the insured is required under the statute to cover only certain employees. This would still allow the insured to enter into an agreement to cover other employees, but under the proviso to Section 147(1) (b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless, first : the liability of the insured arises under the Workmen's Compensation Act, 1923 and second : if the employee is engaged in driving the vehicle and if it is public service vehicle, is engaged as conductor of vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of "any person" or "passenger". If this were permissible, then there would be no need to make special provisions for employees of the insured. The mere mention of the word "cleaner" while describing the seating capacity of the vehicle does

not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a passenger. Further plea that khalasi/cleaner was conductor cannot be countenanced. It is doubtful whether a "khalasi" and a conductor are the same. But assuming this were so, there is nothing to show that the appellant had paid any additional premium to cover the risk of injury to a conductor. On the contrary, the policy shows that premium was paid for 13 passengers and 1 driver. There is no payment of premium for a conductor. Since the concerned employee was not engaged in the capacity of driver in respect of whom alone premium was paid apart from the passengers, owner's claim is unsustainable. (Paras 10, 13, 15)

Plea that as the policy was a comprehensive one, it would cover all risks including the death of the khalasi unacceptable. An insurance policy only covers the person or classes of persons specified in the policy. A comprehensive policy merely means that the loss sustained by such person/persons will be payable up to the insured amount irrespective of the actual loss suffered. (Para 14)

9. I have also considered the recent decision of the apex court in case of National Insurance Co. Ltd. v. Kaushalaya Devi and Ors. Reported in 2008 (4) SC 441. Relevant observations made by the apex court in para 12 and 13 of the said decision are reproduced as under:

12. In view of the findings arrived at by the High Court, it must be held that the owner alone was liable to pay compensation to the first respondent herein for causing death of her son by rash and negligent driving on the part of the driver of the truck. The High Court's judgment must be sustained on this ground.

13. The deceased was not the owner of any goods which were being carried in the truck. Admitted position is that he had been traveling in the truck for the purpose of collecting empty boxes. He was a vegetable dealer. He was not traveling in the truck as owner of the goods viz. The vegetables. He was travelling in the truck for a purpose other than the one for which he was entitled to travel in a public carriage vehicle.

10. This aspect of the matter is squarely covered by the decision of this Court in Brij Mohan (supra) wherein the Bench cited with approval the decision in New India Assurance Co. Ltd. v. Asha Rani and Ors. 2003(2) SCC 223 wherein it was statd:

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling

in a goods vehicle, the insurers would not be liable therefor.

See also Premkumari and Others Vs. Prahlad Dev and Others, and Oriental Insurance Co. Limited Vs. Prithvi Raj,

11. Therefore, in view of the aforesaid observations made by the apex court in the aforesaid two decisions and in light of the facts of the present case, according to my opinion, risk of the deceased is not covered by paying additional premium and, therefore, risk of the deceased is not covered by policy. According to my opinion, deceased was also not a third party. Even the risk of driver of the tanker is also not covered by policy of insurance as additional premium in respect of driver has also not been paid and, therefore, findings of the claims tribunal holding the insurance company liable to pay the compensation jointly and severally, are liable to be set aside by exonerating the appellant Insurance Company from the liability to pay compensation to the claimants jointly and severally. Accordingly, this appeal is allowed.

12. Learned Advocate Mr. Sejpal for the claimants submitted that the Insurance Company has deposited entire amount of compensation together with costs and interest before the claims tribunal out of which, an amount of Rs. 1,00,000.00 has been paid to the claimants and remaining amount has been invested and respondents claimants are receiving periodical interest on the said amount invested. Therefore, he submits that either the insurance company or the State Government has to pay compensation to the claimants because liability of both of them is that of joint and several. Ultimately, claimants should not be made to suffer because of the legal fight between owner and insurance company. He submitted that the deceased was an employee working with respondent No. 6 as operator and he expired during the course of employment. He also submitted that ultimately some one has to pay the compensation to the claimants who have lost the bread winner in the vehicular accident. He also submitted that the tribunal has directed the Insurance company and State Government Respondent No. 6 to pay the compensation jointly and severally and now this Court has exonerated the Insurance Co. from the liability to make payment of compensation to the claimants and, therefore, State Government being owner of the offending vehicle is liable to satisfy the award passed by claims tribunal in favour of the respondents claimants.

13. Learned AGP Ms. Pandey has raised serious objection. She submitted that it is not the liability of the State Government to make payment of compensation but was the sole liability of the insurance company to pay compensation to the concerned claimants. As per her submission, there was no fault on the part of the State Government and, therefore, State Government may not be held responsible to satisfy the award. She also submitted that in an appeal filed by the Insurance Company, State Government should not be held liable for payment of compensation to the claimants.

14. Learned Advocate Mr. Parikh submitted that after all, now the Insurance

Company is entitled to get refund the amount deposited by it before the claims tribunal with interest thereon from the claimant or the State Government. He submitted that this must be a natural consequence of exoneration of the insurance company from the liability to pay compensation to the claimants.

15. I have considered the submissions made by three learned advocates before this Court. I have also kept in mind the fact that claimants are widow and daughter of the deceased and daughter is of marriageable age and they are the only heirs of the deceased. I have also kept in mind the fact that award of the claims tribunal holding the appellant and respondent No. 6 jointly and severally liable to pay compensation to the claimants and the relationship between deceased and respondent No. 6 is that of employer and employee. Respondent No. 6 State Government is owner of the offending vehicle which was insured with the appellant. I have also kept in mind the fact that such award made by claims tribunal has not been challenged by State Government Respondent No. 6 and has thereby accepted the award holding it liable to pay compensation jointly and severally, with insurance company.

16. I have also considered the stand of State Government from very beginning that the driver of the tanker is responsible for the said accident. Thus, from such stand of the State Government in its own written statement, it is clear that State Government is aware that because of the negligent driving on the part of its employee, accident has taken place. Criminal case was also lodged against the driver of the tanker and prosecution also continued against the driver of the tanker. Departmental proceedings were also initiated against the driver of the tanker and he was subsequently dismissed from service by State Government holding him responsible for the said act of negligence and careless driving on his part. In its written statement, State Government has also made it clear that tanker driver was in drunken condition and due to his rash and negligent act of driving in drunken condition, accident has taken place wherein deceased lost his life. Therefore, State Government has to suffer for the act committed by its servant, and also being the owner of the vehicle involved in accident. Further, looking to the policy, insurance company is not liable for making payment of compensation as per the decisions of the apex court referred to above because the deceased is not "third party" as per Section 147 of the MV Act. Therefore, Respondent No. 6 in dual capacity i.e. the capacity of owner and also in the capacity of employer of the driver, State Government is liable to satisfy the award made by the claims tribunal. It is the legal obligation of the State Government, as owner of vehicle and also as employer of the driver driving tanker to pay compensation to the claimant. These facts have been considered by this Court in the appeal filed by the Insurance Company while applying the provisions of Order 41, Rule 33 of the CPC for doing complete and substantial justice between the parties while ignoring technical contentions so that the interests of the claimants who are the real sufferers are not jeopardized while keeping in mind the object of the MV Act, 1988 and legal liability of the owner of the vehicle involved in accident.

17. High Court is having very wide powers as an appellate court to modify the relief and if required, it can decide the dispute between co-respondents. In case if appeal filed by the appellant succeeds, then, respondent can be held liable against co-respondents. Powers under Order 41, Rule 33 of the CPC are superior, can be exercised by the appellate court for doing complete justice between the parties. This aspect has been recently examined by this Court in case of *The Oriental Fire and General Insurance Co. Ltd. v. Madhuben Shanabhai and Ors.* reported in 2007 (3) GCD 2046 (Guj). Relevant paragraph 14, 15, 16, 19, 20.3, 20.4 and 21 are reproduced as under:

14. Rule 33 of Order XLI of the Code defines the powers of the Court of appeal. It reads as under:

33. Power of Court of Appeal - The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order u/s 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

What powers can be exercised by the Appellate Court always had been a subject of interesting discussion by various High Courts and the Supreme Court. All the Courts are unanimous in their decisions and in holding that the Appellate Court has powers to modify the relief and if required, it can decide the dispute between the co-respondents. The Courts have decided that in a given case, where the appeal of the appellant is to succeed, then, the respondent can be held liable against the co-respondent. The Apex Court, however, has cautioned all the Appellate Courts to exercise the powers with due care and caution. The Apex Court has observed that though powers under Rule 33 of Order XLI of the Code are appellate powers of the Court or are superior/suo motu appellate powers of the Appellate Court, the same should not be exercised just for nothing.

15. Shri Rajni Mehta, learned Counsel for the appellant, placing reliance upon a judgement of the Supreme Court in the matter of *Mahant Dhangir and Another Vs. Madan Mohan and Others*, has submitted that present is a fit case where this Court should exercise its powers under Order XLI, Rule 33 so that the claimants are not left without any remedy.

In the said matter, the question before the Supreme Court was that if the cross objections are not filed, then, whether powers under Rule 33 of Order XLI can be

exercised by the Appellate Court. The Supreme Court observed that the scope of Rule 22 in relation to cross objections and the scope of Rule 33 in relation to the appellate powers of the Court are totally different. The same are not mutually exclusive, they are closely related with each other. The Supreme Court observed that if objections cannot be urged under Rule 22 against the co-respondent, Rule 33 could take over and come to the rescue of the objector. The Supreme Court further observed that the Appellate Court could exercise the power under Rule 33 even if the appeal is only against a part of the decree of the lower Court. The observations made by the Supreme Court are as under:

If the cross-objection filed under Rule 22 of Order 41 C.P.C. was not maintainable against the co-respondent, the Court could consider it under Rule 33 of Order 41 C.P.C. Rule 22 and Rule 33 are not mutually exclusive. They are closely related with each other. If objection cannot be urged under Rule 22 against co-respondent, Rule 33 could take over and come to the rescue of the objector. The appellate court could exercise the power under Rule 33 even if the appeal is only against a part of the decree of the lower court. The appellate court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words "as the case may require" used in Rule 33 of Order 41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see, may be these: That the parties before the lower court should be there before the appellate court. The question raised must properly arise out of judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It may be urged by any party to the appeal. It is true that the power of the appellate court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities.

16. Shri Mehta, learned Counsel for the appellant-Insurance Company, submits that once his appeal is allowed, then, the appellant-Insurance Company is not required to plead to protect the interest of or in favour of the claimants-respondents, but, present is a case where the appellants, through their Counsel, would be failing in their duty if they do not protect their interest and of those who are relying upon the discretion of the Court and the responsibility of the Insurance Company.

19. The question before this Court is whether this Court should exercise its powers under Rule 33 of Order XLI of the Code. The moment the Court comes to the conclusion that in the event the appeal is allowed, some of the respondents, who have not filed any cross objections, are likely to suffer because the appeal stands allowed, then, the Court has to exercise its powers to protect the interest of the unprotected. Some times the cross objections are filed against the appellant to seek further and better relief. In a given case, where the cross objections are not maintainable against the co-respondent, the Court is entitled to exercise its powers under Rule 33 of Order XLI of the Code. In a given case, a particular plaintiff or claimant-respondent, who was entitled to file the cross objections against the appellant or cross appeal against the appellant, if had not filed the cross objections or a cross appeal, then, his right to claim further and better relief against the appellant would be lost, but, his right to claim the relief against the co-respondent would not be lost because the cross objections, ordinarily, against the co-respondent would not be maintainable. It would be only for the Appellate Court to exercise the powers under Rule 33 of Order XLI of the Code and compensate for the injury, which is likely to be suffered by such non-appealing respondents who will be suffering if the appeal is allowed.

20.3 Placing reliance upon a judgement of the Supreme Court in the matter of Choudhary Sahu (Dead) by Lrs Vs. State of Bihar, it was contended that in a case where a party was required to file cross objections if had not filed the cross objections, then, to give better benefit to non-appealing respondent or the respondent who had not filed the cross objections, the Court could not exercise the powers under Rule 33 of Order XLI of the Code.

In the said matter, the Collector, on the basis of the material placed before him, allowed certain units to the various landholders, who preferred an appeal before the Commissioner of the Division. However, the State Government, feeling satisfied and content with the order passed by the Collector, did not file an appeal. The Commissioner, in the appeal filed by the landholders, while dismissing the appeal, held that the Collector was wrong in making certain observations in favour of the landholders, the Commissioner set aside the findings which were recorded against the interest of the landholders. The Apex Court held that in such a case, the powers under Rule 33 could not be exercised.

It is to be noted that where a person, who has a right of appeal or right to file cross objections against the appellant, if does not file cross appeal or cross objections, then, he cannot ask the Court to enlarge the relief in his favour under the provisions of Rule 33 of Order XLI. Rule 33 takes care of the situation where the respondent is not entitled to file cross objections against the co-respondent and the Court, in a given set of circumstances, feels that such a person should not be left remediless and in such circumstances, modifies the decree in favour of the non-appealing respondent against non-appealing co-respondent.

20.4 Shri Marshall has also placed reliance upon a judgement of the Supreme Court in the matter of Delhi Electric Supply Undertaking Vs. Basanti Devi and

Another, In the said matter, on a complaint filed by Basanti Devi, widow of Bhim Singh, u/s 18 of the Consumers Protection Act, 1986, the State Commissioner by its judgement directed the Delhi Electric Supply Undertaking to pay a sum of Rs. 50,000/- with interest and however, exonerated the Life Insurance Corporation. The matter went upto the Supreme Court. After considering the earlier judgements, the Apex Court held that Rule 33 of Order XLI of the Code clothe the Appellate Court with extraordinary powers. The Apex Court, placing reliance upon a judgement in the matter of Mahant Dhangir (supra), held that the sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and the respondent, but, also between the respondent and the co-respondents. The Supreme Court in the said matter observed that the appeal filed by the Delhi Electric Supply Undertaking deserves to be allowed, but, the Insurance Company could not stand exonerated. The Supreme Court, exercising its powers under Rule 33 of Order XLI, allowed the appeal filed by the Delhi Electric Supply Undertaking, but, at the same time, directed the Insurance Company to make payment of the amount. It is in such case the powers under Rule 33 of Order XLI are required to be exercised. Once the Court finds that its interference in the appeal is likely to interfere with the rights of the non-appealing decree-holder/respondent and in a given case, such decree-holder - respondent would be entitled to the relief against the co-respondent, then, the Appellate Court under Rule 33 of Order XLI would be entitled to modify the decree to suit the purpose.

21. In the present case, I propose to exercise my powers vested in me under Rule 33 of Order XLI of the Code because I am of the opinion that if the present appellant-Insurance Company can be held liable to answer the claim made by the passengers of the matador insured by the respondent-Company treating the said passengers as third party against the present appellant-Company, then, the passengers travelling in the jeep car would also be third party against the Insurance Company of the offending matador.

18. In light of this back ground, considering the fact that the accident occurred due to rash and negligent driving of opponent No. 1, an employee of respondent No. 6 which finding has not been challenged by the respondent No. 6 State nor has disputed the same but, on the contrary, considering the written statement filed by respondent No. 6 before the claims tribunal wherein specifically it was contended by the State that opponent No. 1 was liable for the accident because he was unauthorizedly driving the vehicle involved in accident in a rash and negligent manner which resulted into accident. It was also alleged in the written statement by respondent No. 6 before the claims tribunal that the opponent No. 1 was in drunken condition and that is how accident took place. Therefore, according to my opinion, if that is so as alleged and admitted by the State Government, then, the State Government, being the owner of the vehicle, is liable to pay compensation to the claimants as per the award made by the claims tribunal. I am also of the opinion that the State Government being the owner of the offending vehicle and employer of opponent No. 1 as admitted by it, is

vicariously liable to pay compensation to the claimants as per the award made by the claims tribunal since the offending vehicle was driven by the employee of respondent No. 6 in drunken condition, in rash and negligent manner and that is why accident occurred as held by the claims tribunal which has not been challenged by respondent No. 6 before this Court by filing any appeal against the impugned award. I am considering the powers of the appellate court under Order 41, Rule 33 of the CPC before passing final order in these proceedings keeping in view the interest of justice and object of the Motor Vehicles Act, 1988. Considering the benevolent provisions contained in the Act, in such a situation, claimant who have lost bread winner of their family because of rash and negligent driving of tanker by opponent No. 1 owned by opponent No. 6 should not remain without compensation. Therefore, now, in view of exoneration of the appellant insurance company, State Government must pay the amount of compensation legally and also considering the statutory provisions, the Respondent No. 6 is duty bound to satisfy the award passed by Tribunal.

19. Therefore, in view of this factual back ground not disputed by respondent No. 6 before this Court, it is directed to respondent No. 6 State Government Executive Engineer, Irrigation Department to deposit entire amount of compensation together with costs and interests awarded by the claims tribunal within the period of five months from the date of receipt of copy of this order. After the amount of compensation as ordered above is deposited by respondent No. 6 State before the Claims Tribunal, same amount has to be paid by the claims tribunal to the appellant New India Assurance Co. by account payee cheque drawn in favour of the appellant insurance company.

20. At this stage, learned Advocate Mr. D.C. Sejjal appearing for the claimant submitted that the orders for disbursement of the amount of Rs. 1,50,000.00 may be passed out of the amount of compensation invested by the claims tribunal because daughter is marriageable age and her marriage is likely to take place in the near future. Therefore, considering his request, it is directed to claims tribunal to pay Rs. 1,50,000.00 to respondent No. 1 claimant Meenaben B. Dhangar by way of an account payee cheque drawn in her favour and remaining amount be invested in the name of the respondents claimants as per the earlier orders passed by the court while clarifying that the claimants will be entitled to receive periodical interest that may be accruing on such FDRs. regularly and without any default.

21. With these observations and directions, this appeal is allowed with no order as to costs.