

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Decided on: 19<sup>th</sup> January, 2012*

+ **MAC.APP. 400/2011**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

RAM CHANDER YADAV & ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv.

+ **MAC.APP. 466/2011**

NARESH YADAV & ORS ..... Appellant

Through: Mr. S.N. Parashar, Adv.

versus

LAKSHMI MANDAL & ORS ..... Respondent

Through: Ms. Suman Bagga, Adv. for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

## **J U D G M E N T**

### **G. P. MITTAL, J. (ORAL)**

1. These are two Cross Appeals filed by the parties in respect of award of compensation of Rs.18,29,375/- by the order dated 22.01.2011 passed by the Motor Accident Claims Tribunal (the Tribunal).

2. Deceased Vijay Pal died on account of injuries suffered by him in a motor accident on 13.12.2009. His date of birth was 01.04.1969 and thus, he was aged about 40 years and eight months on the date of his death.
3. The grievance of the Appellant ICICI Lombard General Insurance Co. Ltd (the Insurer) in MAC.APP. 400/2011 is that the multiplier of '15' selected by the Tribunal was on the higher side, whereas the learned counsel for the Respondents No. 1 to 4 (Appellants No.1 to 4 in MAC APP.466/2011 as per amended memo of parties) submits that in the last Return filed for the financial year 2008-09 the deceased returned the income of Rs.4,51,587/-, therefore, the compensation ought to have been awarded on the basis of the last Income Tax Return (ITR).
4. I do not see any reason to disbelieve the last ITR of Rs.4,51,587/- which appears to have been filed on 30<sup>th</sup> July, 2009 i.e. before the deceased succumbed to the injuries he suffered in the accident. Moreover, in respect of various bills raised by the deceased in favour of various parties in Maharashtra, TDS was deducted by them. In the ITR filed for the years 2008-09 Advance Tax/TDS of Rs.52,603/- was deducted against his liability of Rs. 26,078/-.
5. By the Income Tax Return in question, the deceased claimed a refund of income tax of Rs.26,530/-, which was obviously deducted before March, 2009 i.e. almost nine months before the

accident.

6. At the same time, it is important to note that there was a spurt in the deceased's income during the assessment year 2009-10 from the previous income of Rs.1,44,466/- to Rs.1,54,385/-.
7. In the circumstances, the ITR for the last year alone cannot form the basis for the computation of the loss of dependency. The average of three years comes to Rs.2,50,146/- on which there was a liability of income tax of ₹ 8014/-
8. Since the deceased was aged about 40 years and eight months as per the date of birth mentioned in the ITR, the appropriate multiplier was '14' instead of '15' taken by the Tribunal. On applying the multiplier of '14' the loss of dependency comes to ₹ 25,42,386/- (2,50,146/- - 8014/-(income tax) -  $1/4 \times 14$ ).
9. In addition, the Respondents Claimants are entitled to a sum of Rs.25,000/- towards the loss of love and affection, Rs.10,000/- towards loss of estate, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses.
10. After addition of the notional sum under conventional heads, the revised compensation comes to ₹25,92,386/- (25,42,386/- + 50,000/-)
11. The overall compensation is enhanced from Rs.18,29,375/- to ₹ 25,92,386/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till the date of payment.

12. By order of this Court dated 06.05.2011 passed in MAC APP.400/2011, only 75% of the awarded amount was ordered to be released in favour of the Claimants. Rest 25% of the awarded amount was ordered to be kept in a Fixed Deposit Receipt with some nationalized Bank in the name of the Registrar General of this Court.
13. Since the Appellant Ram Chander, father of the deceased Vijay Kumar died after passing of the impugned order and a sum of Rs.2,00,000/- was ordered to be paid to him, the said amount shall be payable to Appellant No.1 Smt. Naresh Yadav widow of the deceased Vijay Pal Yadav.
14. 55% of the enhanced amount (of ₹7,63,011/-) shall be payable to Smt. Naresh Yadav, the deceased's widow. Rest 15% each shall be equally paid to Appellants No.2, 3 and 4 Vijender Yadav, Ms. Neelam Yadav and Master Rahul Yadav respectively and shall be held in a fixed deposit in UCO Bank, Delhi High Court Branch, New Delhi for a period of three years. Appellants No.2,3 and 4 shall be entitled to apply to the Tribunal for premature encashment of FDR, in case the money is needed for their higher education.
15. The enhanced amount payable to Appellant No.1 shall be held in fixed deposit for a period of seven years. The Appellants would be entitled to payment of interest on quarterly basis.
16. Respondent No.3 ICICI Lombard General Insurance Company

Limited is directed to deposit the enhanced amount alongwith the interest @ 7.5 per annum from the date of filing of the petition till the payment, within 30 days in UCO Bank, Delhi High Court Branch, New Delhi.

17. MAC APP. 400/2011 preferred by the Insurance Company is dismissed and MAC APP.466/2011 filed by the Claimants is allowed in above terms. No costs.

**(G.P. MITTAL)**  
**JUDGE**

**JANUARY 19, 2012**

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