

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

Date of decision: 10th May, 2012

+ **MAC.APP. 427/2011**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through Ms. Suman Bagga, Advocate

versus

SWATANTRATA SHARMA & ORS Respondents

Through Mr. S. Tomar, Advocate for the
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for reduction of compensation of ₹14,19,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the injuries suffered by Swatantrata Sharma, the First Respondent in a motor accident which occurred on 04.02.2009.
2. The only ground of challenge is that out of an amount of ₹11,50,000/- awarded towards medical treatment, special diet and conveyance, a sum of ₹4,35,000/- was reimbursed to the First Respondent under the mediclaim policy.

3. It is urged that the said benefit having accrued to the First Respondent on account of the injuries sustained in the accident, the same was liable to be deducted from the cost of treatment paid to the First Respondent.
4. On the other hand, it is urged by the learned counsel for the First Respondent that an amount of ₹4,35,000/- was paid by the Insurance Company on account of obtaining a mediclaim policy for which the First Respondent paid the premium. The Appellant being a tortfeasor cannot get any benefit from the policy obtained by the First Respondent.
5. It is urged that the compensation awarded towards permanent disability on assuming the income of ₹3,000/- (towards gratuitous services rendered by a housewife) on the basis of *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197 is on the lower side. It is urged that this accident occurred in the year 2009 whereas in *Lata Wadhwa (supra)* the accident occurred in the year 1989.
6. This Appeal is squarely covered by a judgment of this Court in MAC APP.191/2010 titled *Bajaj Allianz General Insurance Co. Ltd. v. Ganpat Rai Sehgal & Ors.* decided on 03.01.2012 wherein this Court noticed *United India Insurance Co. Ltd. v. Patricia Jean Mahajan* (2002) 6 SCC 281; *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami and Ors.*, AIR 1962 SC 1; *Helen C. Rebello v. Maharashtra S.R.T.C.*, (1999) 1 SCC

90; *Jitendra v. Rahul* (2008) (5) MPHT 336; and *Udam Singh Sethi v. Tamal Das and Ors.* MAC. APP. No. 369/2006 decided on 26.10.2009; and held that the Claimant would not be entitled to the medical expenditure which has been reimbursed to him under the mediclaim policy.

7. Thus, a Claimant who has been reimbursed for the medical expenditure incurred by him (due to a motor accident) through his mediclaim policy, will not be again entitled to claim compensation for the same from the insurer of the offending vehicle, in a claim filed under the Motor Vehicles Act.
8. Applying the same principle to the instance case, the first Respondent cannot benefit twice i.e. she cannot recover the compensation from the tortfeasor for which she has already been compensated by her mediclaim policy. Therefore, the Claims Tribunal erred in not deducting a sum of ₹4,35,000/- which was admittedly paid to the first Respondent under the mediclaim policy. The said amount is liable to be deducted from the amount of ₹ 11,50,000/- paid towards the medical treatment.
9. The Claims Tribunal awarded a compensation of ₹1,44,000/- taking 45% disability in respect of right lower limb to be 50% disability in carrying out normal household work by the first Respondent. The same is not disputed by the Appellant during the course of arguments.

10. The value of domestic services rendered by a housewife was dealt with at great length by this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30th January, 2012. This Court noticed the following judgments of the Supreme Court:-

(i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,

(ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,

(iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,

(iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,

(v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,

(vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,

(vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and

(viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of

dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh (supra)* is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.*
- (ii) Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) Minimum salary of a non-Matriculate in other cases.*
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification*

stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.”

11. There is no evidence as to the qualification of the first Respondent. Thus, the minimum wages of a non-Matriculate have to be considered for the grant of compensation which were ₹4129/- per month on the date of the accident. Moreover, she was aged 59 years and therefore, there shall be deduction of 25% as per clause (v) above.
12. Thus, in view of above, the compensation towards loss of earning capacity comes to ₹1,67,224/- (4129/- - 25% x 1/2 x 12 x 9) instead of ₹1,44,000/-
13. It is urged by the learned counsel for the Appellant that without any Cross Objections, the first Respondent cannot be granted any enhancement.
14. The first Respondent (the Claimant) by virtue of the provision of Order XLI Rule 22 CPC can resist the Appeal for reduction

of compensation on other grounds without filing of any Cross Appeal or Cross Objections. The question of resisting the Appeal on quantum of compensation awarded by the Claims Tribunal without filing any Cross Appeal or Cross Objection was considered by three Judge Bench in *Jayakodi & Ors. v. Branch Manager, NIC & Anr., Civil Appeal No.401/2008 (arising out of SLP (Civil) No.13746/2004 decided on 11.01.2008)*. The Supreme Court held that the Court can change the compensation under various heads so long as the compensation is not reduced in an Appeal filed by the Claimant. The relevant portion of the report is extracted hereunder:

“5.....When an appeal is filed by claimants claiming enhancement, the appellate court will calculate the just compensation, in accordance with law. If the amount so calculated is in excess of what is awarded, the difference is awarded as additional compensation. If the amount calculated is found to be less than or equal to the amount awarded by the court below, then the amount awarded by the court below is maintained. But there cannot be any objection for recalculation of compensation under various heads in accordance with law. So long as the total amount awarded is not less than what is awarded by the court below, there cannot be any objection if the amount is reduced under any particular head.”

15. Thus, without filing any cross objections, the first Respondent can resist the Appeal for reduction of compensation on the ground that may be available to him.

16. In view of the above discussion, there is overall reduction of ₹4,11,776/- in the compensation. (4,35,000/- + 1,44,000/- - 1,67,224/-).
17. The amount of ₹4,11,776/- along with interest as awarded by the Claims Tribunal and the interest accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company. Rest of the amount shall be disbursed to the first Respondent in terms of the order passed by the Claims Tribunal.
18. The statutory amount of ₹25,000/- be refunded to the Appellant Insurance Company.
19. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 10, 2012

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