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

% **Date of Decision: 05th October, 2016**

\+ **MAC.APP. 1054/2013 & C.M. APPL. 20743/2013**

HDFC ERGO GENERAL INSURANCE CO LTD ..... Petitioner
Through: Mr. Sameer Nandwani, Advocate

Versus

LUCIE NAYAK @ VIDYA & ORS ..... Respondent
Through: Mr. S.N. Parashar, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award dated 17th August, 2013 whereby compensation of Rs.1,77,86,750/- has been awarded to respondents no.1 to 3.

2. The accident dated 4th September, 2009 resulted in the death of Anand Nayak. The deceased was aged 67 years at the time of the accident and was survived by one daughter and two sons who filed the claim petition before the Claims Tribunal. The deceased was working as a Professor with Fribourg University, Switzerland drawing a salary equivalent to Rs.6,41,197.26 per month. The Claims Tribunal took the income of the deceased as Rs.4,43,168.75 per month after deducting the Income Tax. The Claims Tribunal deducted 1/3rd towards his personal expenses and applied the multiplier of 5 to compute the loss of dependency at Rs.1,77,26,750/-. The Claims Tribunal awarded Rs.25,000/- towards loss of love and affection,

Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.1,77,86,750/-.

3. Learned counsel for the appellants submits that the respondents No.1 to 3 were not dependent upon the deceased and they are not entitled to the loss of dependency as awarded by the Claims Tribunal.

4. Learned counsel for respondents No.1 to 3 submits that respondents No.1 to 3 were dependent upon the deceased. It is further submitted that even if respondents No.1 to 3 are not taken as dependants, respondents No.1 to 3 are entitled to 1/3rd of the income of the deceased towards the loss of estate in terms of the principles laid down by this Court in ***Keith Rowe v. Prashant Sagar,*** II (2010) ACC 64. It is further submitted that the compensation awarded by the Claims Tribunal towards loss of love and affection and funeral expenses are on a lower side.

5. There is merit in the contentions urged by learned counsel for the appellants. Respondents No.1 and 2 were aged about 25 years and 26 years at the time of the accident and do not appear to be dependent upon the deceased. Respondent No.3 aged about 8 years was living with her mother since 2003 and cannot be said to be dependent upon the deceased. In that view of the matter, respondents No.1 to 3 are entitled to the loss of estate instead of the loss of dependency.

6. The Claims Tribunal has taken income of the deceased as Rs.4,43,168.75 per month. Respondents No.1 to 3 are entitled to loss of estate of 1/3rd of the income of the deceased i.e. Rs.1,47,722.917 per month (1/3rd of Rs.4,43,168.75). Appling multiplier of 5, the total

loss of estate is computed as Rs.88,63,375/-. The Claims Tribunal has awarded Rs.25,000/- towards the loss of love and affection which is on a lower side and is enhanced to Rs.1,00,000/-. The Claims Tribunal awarded Rs.25,000/- towards funeral expenses which is on a lower side, considering that the body of the deceased was taken to Switzerland for last rites and Rs.3,00,000/- was incurred on the transportation and last rites of the deceased. Rs.3,00,000/- is awarded towards the transportation and funeral expenses of the deceased. Respondent No.1 to 3 are entitled to total compensation of Rs.92,63,375/-(Rs.88,63,375/- + Rs.1,00,000/- + Rs.3,00,000/-).

7. The appeal is allowed and the award amount is reduced from Rs.1,77,86,750/- to Rs.92,63,375/- along with interest @ 9% per annum from date of filing the petition till realization. The shares of the three respondents in the award amount shall be equal.

8. The appellant has deposited 50% of the award amount in terms of the order dated 19th November, 2013. As per the calculation done by the Accounts Officer of this Court, respondents No.1 to 3 are entitled to a further amount of Rs.7,88,804/-. The appellant is directed to deposit the balance award amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Lucie Nayak within three weeks.

9. The amount already deposited by the appellant is lying in fixed deposit with UCO Bank, Delhi High Court Branch and as per UCO Bank, the balance amount as on 03rd October, 2016 is Rs.1,35,60,540/-. With respect to 1/3rd share of respondents No.1 and

2, UCO Bank shall release 1/3rd of their share to each of respondents No.1 and 2 by transferring the said amount to their respective foreign bank accounts, subject to RBI guidelines, if any, and their balance 2/3rd share be kept in 2 FDRs of equal amount for the period of 1 year and 2 years respectively, with cumulative interest. Upon maturity, UCO Bank shall transfer the maturity amount to respondents No.1 and 2 respectively.

10. Respondent No.3 is a minor and therefore, his 1/3rd share shall remain in fixed deposit till he attains the age of majority. Upon his attaining majority, UCO Bank shall release 1/3rd of the maturity amount to him by transferring the same to his foreign bank account, subject to RBI guidelines, if any, and the balance 2/3rd amount be kept in 2 FDRs of equal amount for the periods of 1 year and 2 years respectively.

11. With respect to the balance award amount directed to be deposited by the appellant within three weeks, UCO Bank shall, on deposit, release 1/3rd share of respondents No.1 and 2 to them without any restriction of FDR. However, the share of respondent No.3 be kept in FDR with cumulative interest till he attains the majority. On attaining majority, this amount be released to respondent No.3.

12. All the original FDRs shall remain with UCO Bank, Delhi High Court Branch and on maturity the amount be transferred to the accounts of the beneficiaries without insisting on their personal appearance in the bank. However, the photocopies of the FDRs shall be provided to the claimants/respondents.

13. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

14. The statutory amount be refunded back to the appellant after deposit of balance award amount in terms of this judgment.

15. Pending application is disposed of.

16. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

OCTOBER 05, 2016 **J.R. MIDHA, J.**
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