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

+ MAC.APP.No.369/2006

% Date of decision: 26th October, 2009

UDAM SINGH SETHI ..... Appellant
Through : Mr. Navneet Goyal, Adv.

versus

TAMAL DAS & ORS. ..... Respondents
Through : Ms. Suman Bagga, Adv. for R-3.

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

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	**YES**
2.	To be referred to the Reporter or not?	**YES**
3.	Whether the judgment should be reported in the Digest?	**YES**

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.2,74,243/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 16th December, 2003 resulted in the injuries to Udham Singh Sethi and his wife, Jaswant Kaur Sethi. Two separate claim petitions were filed in respect of the injuries suffered by them. Both the claim petitions were decided by a common award against which two appeals have been filed. This appeal relates to the injuries suffered by the appellant.

3. The appellant suffered fracture of right thigh and pubic region and was hospitalized from 16th December, 2003 to 15th

February, 2004. The appellant was operated upon on 18th December, 2003. The appellant has suffered permanent disability to the tune of 45%. The appellant incurred Rs.3,55,347/- on his treatment out of which Rs.3,26,104/- has been reimbursed to him under mediclaim policy. The learned Tribunal has awarded Rs.29,243/- towards the nature of injuries and reimbursement of medical expenses, Rs.75,000/- towards pain and suffering, Rs.50,000/- towards loss of enjoyment of amenities of life/permanent disability, Rs.1,00,000/- towards loss of earning capacity and Rs.20,000/- towards conveyance/special diet/attendant charges. The total compensation awarded to the appellant is Rs.2,74,243/-.

4. The learned counsel for the appellant has urged following grounds at the time of hearing of this appeal:-

(i) The medical expenditure of Rs.3,26,104/- incurred by the appellant on his treatment be awarded.

(ii) Compensation towards conveyance/special diet /attendant charges be enhanced.

(iii) The rate of interest be enhanced from 6% to 7.5% and interest for the period from 22nd February, 2005 to 10th November, 2005 be also awarded.

5. The learned counsel for the claimant submits that the amount received by the claimant under a mediclaim policy cannot be deducted from the compensation payable under the Motor Vehicles Act. The learned counsel for the claimant refers to and relies upon the judgments in the case of **Madhya Pradesh State Road**

Transport Corporation vs. Priyank, 2000 ACJ 701 and **Vrajesh Navnitlal Desai vs. K. Bagyam, 2006 ACJ 65** in support of the above preposition. The learned counsel for the claimant also refers to and relies upon the Full Bench judgment of the Madhya Pradesh High Court in the case of **Kashiram Mathur vs. Rajendra Singh, 1983 ACJ 152** and two judgments of this Court in the cases of **Dr. A.C. Mehra vs. Behari Lal, 1998 ACJ 379** and **Oriental Insurance Company vs. K.P. Kapur, I (1997) ACC 138**.

6. The learned counsel for respondent No.3 submits that the expenditure incurred by the appellant on his treatment has been reimbursed to him under mediclaim policy and, therefore, he is not entitled to medical expenditure incurred by him on his treatment as he has not suffered any loss to this regard. However, the learned counsel for respondent No.3 has not been able to cite any judgment in support of this proposition.

7. Since no assistance of any legal judgment has been provided by learned counsel for respondent No.3, the Court had to do the legal research. The Hon'ble Supreme Court has settled the law in this regard in the case of **United India Insurance Co. Ltd. vs. Patricia Jean Mahajan AIR 2002 SC 2607.** The Hon'ble Supreme Court has held that the claimant is not entitled to claim compensation in respect of which the claimant has received the benefit as a consequence of the injuries sustained which otherwise he would not have been entitled to. The findings of the Hon'ble Supreme Court in this regard are as under:-

“21. Mr. Soli J. Sorabji submitted that while assessing the amount of compensation, the benefits which have accrued to the claimants by reason of death must also be taken into account. A kind of balancing of losses and the gains or benefit by reason of death would be necessary. In support of the above contention he has referred to a decision **MANU/SC/0016/1961 : [1962]1SCR929 : [1962]1SCR929 Gobald Motors Service Limited v. R.M.K. Veluswami and Ors.** It is a decision by three judges Bench of this Court, and at page 938 the observations made by the House of Lords in **Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601** has been quoted which reads as follows:-

"The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately"

22. To further elaborate the above proposition, observations made by Lord Wright in **Davies case (supra)** have also been quoted. It reads as follows:-

"The damages are to be based on the reasonable expectation of pecuniary benefit of benefit reducible to money value. In assessing the damages all circumstances which may be legitimately placed in diminution of the damages must be considered..... The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

23. The learned counsel laid stress on the last part of observation made to the effect that - for the purposes of balancing losses and gains any pecuniary advantage which from whatever source come to them, has to be considered.

24. It is submitted in **Gobald's case** the principle of b1 **Devies Case** was referred and taken into consideration. Reliance has also been placed on the decision reported in **M/s. Shekhupura Transport Co. Ltd. v. Northern India Transport Company** particularly to the observations made by the Court in paragraph 6 of the judgment where the principle in the case of **Gohalds Motors (supra)** has been reiterated. In this connection learned counsel for the Insurance Company has also drawn our attention to the decision in the case of **Susamma Thomas, (supra)** particularly on paragraph 8 of the report, where it is observed that the principle in the case of **Devies v. Powell** was adopted, in the case of **Gobald Motors (supra)**. It is thus submitted that principle of balancing of loss and gains, so as to arrive at a just and fair amount of compensation has been accepted by this Court as well.

On behalf of the Insurance Company **(sic)(3) All ER. 870 Hodgson v. Trapp and Anr.** has been relied in which our attention has particularly been drawn to the following observations made at Page 873:

".....the basic rule is that it is the net consequential loss and expense which the Court must measure, if, in consequence of the injuries sustained, the plaintiff has enjoyed receipts to which he would not otherwise have been entitled, prima facie, those receipts are to be set against the aggregate of the plaintiff's losses and expenses in arriving at the measure of his damages. All this is elementary and had been said over and over again. To this basic rule there are, of course, certain well established, though not always precisely defined and delineated, exceptions. But the Courts are, I think, sometimes in danger, in seeking to explore the rationale of the exceptions, of forgetting that they are exceptions. It is the rule which is fundamental and axiomatic and exceptions to it which are only to be admitted on grounds which clearly justify their treatment as such."

From the above passage it is clear that the deductions are admissible from the amount of

compensation in case the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. It does not cover cases where the payment received is not dependent upon an injury sustained on meeting with an accident. The other observation to which our attention has been drawn at Page 876 plassitam `F' also does not help the contention raised on behalf of the Insurance Company for deduction of amounts in the present case. The Court was considering a situation where due to the injuries received the victim was claiming cost of care necessary in future in respect of which statutory provision, provided for attendant's allowance.It was found that the statutory benefit and the damages claimed were designed to meet the identical expenses. This is however not so, at least not shown, to be so in the case in hand.

25. Shri Soli J. Sorabjee has also made reference from ALR Digests under the heading Damages, From American Law Report 84 ALR2d. In some cases, depending upon the provisions of the Act, it was held that the amount of compensation for death by wrongful act should not be diminished on receipt of social security benefit. In general, such payments have been regarded as being in the same category as account paid to a surviving beneficiary on a life or casualty insurance policy or as a pension, which, it is well settled, are not to be considered in mitigating all damages sustained as a result of tortious death. (It is extracted from page 765 with reference of 16 Am Jur, Death $$ 222 and 223). In some cases a different view was taken by the American Court. But it all depended upon the terms of the provisions of the policies.

26. A reference was also made to the report of the **Royal Commission on civil liability and compensation for personal injury under the Chairmanship of Lord Pearson Volume-1** At page 106 and 107 it recommended for taking into account the benefits which may be deducted from the account of damages payable to the claimants. At page 109 it has recommended as follows:-

"Benefits to be offset-

481--We agree with the principle in the 1948 Acts that the benefits deducted should be limited to those payable to the plaintiff as a result of injury for which damages are awarded. In practice, this means that such benefits as state retirement pensions, child benefits and maternity benefits should be disregarded.

482--We recommend that the full value of social security benefits payable to an injured person or his dependents as a result of an injury for which damages are awarded should be deducted in assessment of damages."

And at page 118 under para 537 our attention has been drawn to a passage which reads as under:-

"**537.** Under the present law in England, Wales and Northern Ireland, pecuniary benefits derived by a dependant of a deceased person from his estate are taken into account in assessing damages under the Fatal Accidents Acts. Usually, any deduction is unimportant because, if the sum would have been paid to the plaintiff in any event in the future (for example, under a will), it is not deducted in full. Instead, an allowance may be made of accelerated payment and certainty of receipt. Nr does the rule apply to payments under a life insurance policy or to the use of a home or property. A full deduction is, however, made where the dependant receives a sum awarded to the estate of the deceased for non pecuniary loss."

27. A perusal of the recommendations of the Royal Commission headed by Lord Pearson as referred to and relied upon behalf of the Insurance Company also does nt indicate that, all kinds of receipts or benefits as may be payable to the claimants from whatever source and under whatever statutory provisions have to be deducted. The recommendations made specific mention about non deductibility of amount of pension the benefit on account of Life Insurance, Child benefit and maternity benefit etc. It is also specifically provided under para 482 quoted above that the recommendation is for deducting full value of social security benefits payable as a

result of injury for which damages are awarded. That is to say benefits not related of the injury are not to be taken into account for deductions.

28. A reference to **Mac Granger on damages 16 Edition** has also been made in relation to deduction of social security benefits. Our attention is drawn to page 1065 paragraph 1628 and paragraph 642 at page 1071 where reference of the decision in Hodgson case (supra) has been made. It is stated that unless receipts fell within one of the very few exceptions to the basic rules, all benefits received as a result of injuries should now be deductible in order to achieve the proper compensation, and not over compensation of the plaintiff. It is further observed that payments by way of social security are not exceptional for these purposes according to the Hodgson's case.

29. Shri Soli J. Sorabjee, learned senior counsel also referred to **Encyclopedia America page 186 (I)**. There seems to be social security Act 1935 in force in America, providing for different kinds of social security. It is also indicated how the social security fund is constituted and utilized for payments under the social security for unemployed, dependent children, to the needy aged and to the disabled people etc. Tax is also realizable contributing into social security fund.

30. Shri P.P. Rao, learned senior counsel appearing for the claimants has submitted that only such amount received on account of social security can be deducted, which becomes payable by reason of death by accident and not otherwise. We find force in the submissions of the learned counsel on this score. It is further submitted that the unemployment allowance or other such social security benefit under the social security Act etc. are not necessarily dependant upon the accidental death of the bread earner. Such allowances are payable otherwise even though the victim may not have died and may be still alive. Therefore, such payments which are unconnected and unrelated with the event of an accident resulting in injury or death, have to be disregarded for the purposes of deduction from the amount of damages. He has also referred to some American decisions one of them is **230.S.O. 2(d)(1) 1968**

Flap Lexis 5073 Marc A. O'NEAL..... Appealed No. H-303, The Court of Appeals Florida first Districts the opinion of judge Carroll was countered by the other judges and the Chief Justice. He has drawn our attention to the following observation:

"Stated broadly the general Rule founded upon decisional law as well as logic and justice seems to be that a dependent can not reduce the damages for which there was otherwise be liable by showing that the plaintiff received compensation from a Collateral source such benefits received from welfare and pension funds."

31. Learned senior counsel appearing on behalf of the claimants also submits that the High Court has rightly placed reliance upon a decision of this Court reported in **Helen Rebellos' case**. It is further submitted that this Court has rightly made a distinction between the claims under the Fatal Accidents Act and the Motor Vehicles Act. Both parties have relied upon and referred to the above decision. The main question for consideration of the Court was in respect to the amount of Life Insurance as to whether the same was to be deducted from the amount of compensation payable to the claimants or not.

32. Shri P.P. Rao, learned counsel appearing for the claimants submitted that the scope of the provisions relating to award of compensation under the Motor Vehicles Act is wider as compared to the provision of the Fatal Accidents Acts. It is further indicated that the **Gobald's case** (supra) is a case under the Fatal Accident Acts. For the above contention he has relied upon the observation made in the Rebello's case. It has also been submitted that only such benefits, which accrued to the claimant by reason of death, occurred due to an accident and not otherwise, can be deducted. Apart from drawing distinction between the scope of provisions of the two Acts namely, Motor Vehicles Act and the Fatal accident Act, this Court in the **Helen Rebello's case** accepted the argument that amount of insurance policies would payable to the insured, the death may be accidental or otherwise, and even where the death may not occur the amount will be payable

on its maturity. The insured chooses to have insurance policy and he keeps on paying the premium for the same, during all the time till maturity or his death. It has been held that such a pecuniary benefit by reason of death would not be such as may be deductible from the amount of compensation.

33. It may be useful to quote paragraph 33 of the decision which reads as under"-

"Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed.Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, a against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken not of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee."

The Court has observed in the last part of the para 34:-

"How can an amount of loss and gains of all one contract be made applicable to the loss and gain of an other contract."

Similarly, how an amount receivable under a statute has any co- relation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law. The court has further referred to receipts of Provident Fund which is a deferred payment out of contribution

made by an employee during tenure of his service Such an amount is payable irrespective of accidental death of the employee. The same is the position relating to family pension. There is no co-relation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death which otherwise in the normal course one would be entitled to receive. This Court for taking the above view has also referred to certain English decisions as discussed in paragraph 18 of the judgment.

34. We are in full agreement with the observations made in the case of Helen Rebello (supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some co-relation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this Judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some co-relation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation. Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to pre-mature death of the insured. So far other items in respect of which learned counsel for the Insurance Company has vehemently urged for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no co-relation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which, payment on account of social security system is made one of the constituent of fund is tax which is deducted

> from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the Insurance Policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act Providing for just compensation on account of accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse of, if he had never taken an Insurance Policy or had not made investments for future returns."

8. In the case of **Jitendra vs. Rahul, 2008 (5) MPHT 336,** the Madhya Pradesh High Court following the judgment of the Hon'ble Supreme Court in the case of **Patricia Jean Mahajan (supra)** held that the claimant is not entitled to the amount received by him under the mediclaim policy. At the most, the claimant is entitled to the amount of premium paid for the mediclaim policy. The findings of the Madhya Pradesh High Court are reproduced hereunder:-

> "3. Learned Counsel for appellant submits that appellant spent a sum of Rs. 29,000/- in his treatment but the same was rejected by learned Tribunal on the ground that appellant was having a medi-claim policy and the amount spent on that account has been recovered from Insurance Company. Learned Counsel further submits that learned Tribunal committed error in deducting the amount of medical expenses only on the ground that appellant was having a medi-claim policy. Reliance was placed on a decision of Full Bench of this Court in the matter of Kashiram Mathur v. Sardar Rajendra Singh 1983 ACJ 152, wherein this Court has observed that amount payable under life insurance policy, provident

fund, family pension, gratuity cannot be taken into account while awarding compensation. Reliance was also placed on a decision of Division Bench in the matter of MPSRTC v. Priyank MANU/MP/0436/1999, wherein Division Bench of this Court has observed that no deduction of amount which has been received by claimant from the Insurance Company for medical treatment and disability is deductible from the amount of compensation payable to the injured-claimant because the amount which has been received by claimant is under contract of insurance for which the appellant has paid premium. Reliance was also placed on a decision in the matter of Vrajesh Navnitlal Desai v. K. Bagyam 2006 ACJ 65, wherein Bombay High Court after placing reliance on a decision of this Court in the matter of MPSRTC v. Priyank has observed that there is no reason to take any different stand in the matter and held that reimbursement of medical expenses are under the contract of insurance policy.

4. Learned Counsel for respondent No. 3 placed reliance on a decision in the matter of **United India Insurance Co. Ltd. v. Patricia Jean Mahajan (2002) 2 SCC 281**, wherein Hon'ble Apex Court has placed reliance on a decision in the matter of Hodgson v. Trapp 1988 (3) All ER 870, wherein it was observed as under:

...the basic rule is that it is the net consequential loss and expense which the Court must measure, if, in consequence of the injuries sustained, the plaintiff has enjoyed receipts to which he would not otherwise have been entitled, prima facie, those receipts are to be set against the aggregate of the plaintiffs losses and expenses in arriving at the measure of his damages. All this is elementary and has been said over and over again. To this basic rule there are, of course, certain well established, though not always precisely defined and delineated, exceptions. But the Courts are, I think, sometimes in danger, in seeking to explore the rationale of the exceptions, of forgetting that they are exceptions. It is the rule which is fundamental and axiomatic and exceptions to it

which are only to be admitted on grounds which clearly justify their treatment as such.

Hon'ble Apex Court after taking into consideration the aforesaid law observed as under:

From the above passage it is clear that the deductions are admissible from the amount of compensation in case the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to.

5. From perusal of record, it is evident that place of accident is nearby the centre of examination where the respondent No. 1 was admittedly for the whole day. Apart from this, criminal case was registered against respondent No. 1 immediately after the accident in which respondent No. 1 was arrested. After due appreciation of evidence, learned Tribunal found that offending vehicle was involved in the accident and it is respondent No. 1 who was driving the motor-bike at the relevant time, therefore, there was no reason to disturb the said finding. However, it is also evident that respondent No. 1 was not possessing any type of license at the time of accident. So far as injuries are concerned, it appears that looking to the injuries sustained by appellant the amount awarded is on lower side. No amount has been awarded on account of special diet, transport expenses, expenses incurred on attender and loss of wages for the period when the appellant was under treatment. So far as the law laid down in the matter of United India Insurance Co. Ltd. v. Patricia Jean Mahajan (supra), is concerned, Apex Court has observed that claimant is not entitled to claim compensation which the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. This position of law was not existing before the Hon'ble Division Bench while delivering the judgment in the matter of Priyank (supra). No doubt the amount of medical expenses has been received by the appellant under an agreement of insurance for which appellant has paid the premium. This amount of medical expenses is otherwise not available to the appellant. In the circumstances appellant is at the most entitled

> for the amount of premium which was paid by the appellant for medi-claim policy. In the opinion of this Court learned Tribunal committed no error in deducting a sum of Rs. 29,000/- on account of medical expenses."

7. Following the aforesaid judgment of the Hon'ble Supreme Court in the case of **Patricia Jean Mahajan (supra),** it is held that the appellant is not entitled to medical expenditure of Rs.3,26,104/- which has been reimbursed to him under the mediclaim policy.

8. With respect to the compensation for conveyance/special diet/attendant charges, the amount awarded by the learned Tribunal is on a lower side. Considering the nature of injuries suffered by the appellant, the compensation for conveyance/special diet/attendant charges is enhanced from Rs.20,000/- to Rs.70,000/-.

9. The appellant is entitled to total compensation of Rs.3,24,243/- (Rs.2,74,243 + Rs.50,000). The rate of interest is enhanced from 6% to 7.5% from the date of filing of the petition till realization.

10. The learned counsel for respondent No.3 submits that the learned Tribunal disallowed the interest for the period from 22nd February, 2005 to 10th November, 2005 on the ground that the appellant delayed the leading of evidence. It is well settled that the Insurance Company under its procedural manual is required to immediately appoint an Investigator to verify the facts and offer the compensation to the claimants. There is nothing on record to show that the Insurance Company followed the due

process of law to assess and offer the due compensation to the claimants. In the facts and circumstances of this case, the claimant is entitled to interest from the date of filing of the petition till realization.

11. The appeal is allowed and the award amount is enhanced from Rs.2,74,243/- to Rs.3,24,243/- along with interest @ 7.5% per annum from the date of filing of the petition till realization.

12. The enhanced award amount along with interest be deposited by respondent No.3 with the learned Tribunal within 30 days.

13. Upon the aforesaid deposit being made, the learned Tribunal is directed to release 50% of the same to the appellant and the remaining 50% be kept in fixed deposit for a period of one year.

14. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

J.R. MIDHA, J

OCTOBER 26, 2009
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