

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

MACA.No. 1623 of 2013 ()

AGAINST THE AWARD IN OPMV 37/2010 of M.A.C.T., ERNAKULAM DATED 27-03-2013
APPELLANT(S)/3RD AND 4TH RESPONDENTS:

THE NATIONAL INSURANCE COMPANY LTD
DIV.NO.10, FLAT NO.101-106, N.I.BMC HOUSE
CONNAUGHT PLACE, NEW DELHI
REPRESENTED THROUGH THE MANAGER THIRD PARTY CLAIM OFFICE
KOCHI, REGIONAL OFFICE, PADMA JUNCTION
M.G.ROAD, ERNAKULAM-682 035.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA

RESPONDENT(S)/PETITIONER AND THE RESPONDENTS 1 & 2:

1. AKBER BADSHA, AGED 49 YEARS
S/O.MOHAMMED, XIV/1999A, REYYAN HOUSE
CHULLIKKAL, KOCHI-682 002.

** 2. ROCKY.N.T, AGED 57 YEARS
S/O.THOMAS, NADUVILETHARA HOUSE, ERMALLOOR
CHERTHALA, ALAPPUZHA.

(** DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 19.06.2015 IN
MACA 1623 OF 2013)

3. THOMAS JOB
S/O.THOMAS, XVIII/1533A, NADUVILETHARA HOUSE
PYARRY JUNCTION, THOPPUMPADY, KOCHI-602 005.

R3 BY ADV. SRI.C.K.SAJEEV
R1 BY ADV. SRI.BIJU MARTIN
R1 BY ADV. SRI.D.M.NOWFAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

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M.A.C.A.No.1623 OF 2013
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Dated this the 8th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

This appeal is placed before us by virtue of the 'Reference order' dated 14.07.2010⁵ passed by the learned single judge, doubting correctness of the decision rendered by another learned single judge reported in 2011 (2) KLT 20[*National Insurance Company Ltd. vs. .V.S. Bijumon and others*, which has been relied on by the Tribunal to decline the relief sought for by the Insurance Company for setting off the amount obtained by the claimant under a separate 'Mediclaim policy' in connection with the same injuries sustained in a road traffic accident. The point to be considered is whether reimbursement of the medical expenses under a 'Mediclaim policy' is liable to be set off from the amount of compensation worked out under Section 166 of the Motor

Vehicles Act, in relation to the statutory obligation under Section 147(2) of the Act .

2. Gist of the factual position for the purpose of deciding this issue is that the claimant, while travelling in a car bearing No.KL.07.AX/4114 sustained injuries on 21.01.2008, when the said car collided with a Maruti car bearing No.KL.07.AV.7338, parked on the side of the road, was suddenly taken to the road without any signal. Serious injuries were caused to the claimant, which was sought to be compensated by filing claim petition before the Tribunal. The owner and driver of the Maruti car bearing No.KL.07.AV.7338, sought to remain ex parte. The claim was resisted by the insurance company on different grounds . The Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the Maruti car insured by the appellant. The total compensation payable was worked out as Rs.99500/-, which was directed to be satisfied by the appellant/insurer of the said car, with interest at the rate of 8% per annum, which is the subject matter of

challenge in this appeal.

3. The case of the appellant/Insurer is that, in connection with the injuries sustained to the claimant , a sum of Rs.78500/- was claimed as medical expenses and that the said amount was already satisfied by the Insurance Company under a separate 'Mediclaim policy' obtained by the claimant, which was sought to be set off . The said proposition was objected by the claimant stating that the said amount satisfied by the insurer was under a separate policy, by virtue of the premium paid by the claimant to meet the eventualities and that the same did not have any connection whatsoever with the statutory liability to be satisfied by the insurer as envisaged under Section 147(2) of the Act. The plea of the insurance company was rejected by the Tribunal relying on the decision rendered by a learned single Judge of this Court reported in **2011 (2) KLT 20** (cited *supra*).

4. The present matter was argued in detail by both the sides before the learned single Judge, who found it difficult to agree with the proposition in **2011 (2) KLT 20**. Doubting the

correctness of the said decision, it was observed that the decision sought to be relied on by the learned single Judge in **2011(2) KLT 20** was more with reference to the amount payable by the Life Insurance Corporation of India, which stood entirely on a different footing . It was also observed that the ruling rendered by the Madhya Pradesh High Court as per the decision in MP State Road Transport Corporation v. Priyank (2000 ACJ 701] referred to therein was actually based on the decision rendered by a Full Bench of the same High Court, which in turn had dealt with the case under a Life Insurance Policy and as such, the matter required a re-look. It was further brought to the notice of the Court that the decision rendered by the Karnataka High Court reported in **ILR 2008 Karnataka 3277** [Shaheed Ahmed v. Sanakaranarayana Bhat] referred to in the verdict, to the effect that the amount obtained under 'Mediclaim policy' was not liable to be set off in respect of a claim under Section 166 of the M.V. Act, was subsequently doubted by another learned judge of the Karnataka High Court and it was referred to a Division Bench. Accordingly, the position

of law has been made clear by the Division Bench as per the decision reported in **2013 (1) Karnataka Law Journal 624 (The New India Assurance Company Limited vs. Manish Gupta and others)**, declaring that the amount obtained under 'Mediclaim policy' was liable to be set off, as there could not be extension of any double benefit in respect of the same cause of action.

5. Reference was made to the observations of the Apex Court in **United India Insurance Company Ltd. vs. Patricia Jean Mahajan (AIR 2002 SC 2607)**, pointing out that the amount obtained under the policy, (which was a Life Insurance Policy) could not have been set off against a claim in respect of the accident occurred and dealt with under Section 166 of the M.V. Act. But the said decision was found as not promoting the case of the claimant in any manner. On the other hand, the said decision itself was found as an authority to hold it the otherway round, in the light of the observations in paragraphs 23, 24, 25, 26, 31 and 36. After hearing both the sides, the learned Judge

observed that the view taken by the learned single Judge in **2011 (2) KLT 20** did not appear to be the correct law and that the same required to be referred to a Division Bench. Hence the Reference.

6. We heard the matter in detail.

7. The policy issued by the Life Insurance Corporation and similar bodies providing coverage for life, stands entirely on a different footing than the policy issued by General Insurance Companies covering such other risks; whether it be a policy to cover the statutory insurance under the M.V. Act or the policy of insurance issued under the Workmen's Compensation Act (presently the Employees' Compensation Act) or whether it be a Mediclaim policy. In the case of the former, (i.e. Life Insurance Policies) life of the insured is assured and if there is any threat to the life, it is of course liable to be compensated by the Insurance Company. But satisfaction of the amount covered by such policy does not depend upon occurrence of death/accident and even if nothing happens to the insured, by virtue of the

terms of the policy, the sum assured (which is inclusive of the premium paid and the bonus assured and accrued) is liable to be paid to the insured, once the term of the policy is over. In other words, if a Life Insurance policy has been taken to an extent of Rs.One lakh, paying the requisite amount of premium, during the period of policy, say 10 years, if nothing happens to the life of the insured, the entire amount covered by the policy, plus bonus accrued and such amounts, if any, as per the terms of the policy will be payable to the insured and as such, it is the vested right of the insured to get the said amount, notwithstanding the fact that no contingency has occurred. If any death occurs in the meanwhile, it goes without saying that the beneficiary will be entitled to get the amount covered by the policy without payment of any further premium, as per the terms of the policy. It is not the position in the case of other policies, i.e. latter group referred to above, issued by General Insurance sector. In the case of latter group of policies, it also is a contract of insurance, subject to payment of premium. It is true that, for obtaining Mediclaim

policy as well, various formalities have to be completed by the insured, as to the production of various documents and satisfaction of the premium to the requisite extent. But, so as to make the insured eligible to obtain the amount covered by the policy, the 'contingency' as mentioned in the policy has necessarily to occur, i.e., accident or illness, as the case may be and only subject to suffering the injuries/accident, that the damages/compensation will become due under the said policy. In the case of policy issued under the M.V.Act or Workmen's Compensation Act, occurrence of the accident is a '*sine quo non*' so as to make the beneficiaries entitled and eligible to get the amount covered under the policy to the specified extent.

8. It is worthwhile to note the observations made by the Apex Court in **Helen C. Rebello and others vs. Maharashtra State Road Transport Corporation** (AIR 1998 SC 3191) . The main question considered by the Court was in respect of the amount of Life Insurance, as to whether the same was to be deducted from the amount of compensation payable under the

Motor Vehicles Act to the claimants or not. Paragraph 34 of the said judgment reads as follows:

“34. Thus, it would not include that which claimant receives on account of other form 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 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, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken note 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, in the course of employment of an employee.

9. The said vital distinction, is further discernible from the discussion made by the Apex Court in **United India Insurance Co.Ltd vs. Patricia Jean Mahajan** (AIR 2002 SC 2607). The relevant portion in paragraph 26 of the said verdict is extracted below:

“ 26. 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 Apex Court has made a reference to the judgment in **Helen C. Rebello and others vs. Maharashtra State Road Transport Corporation** (cited supra) and has extracted paragraph 34 (as extracted already) in paragraph 35 of the said verdict as well

10. The judgment rendered by a Division Bench of the Madhya Pradesh High Court in **MP State Road Transport Corporation vs. Priyank** (2000 ACJ 701) which was relied on by the learned Judge of this Court in **2011(2) KLT 20** (cited supra) (which is doubted and referred to) came to be passed placing reliance on the verdict passed by a Full Bench of the Madhya Pradesh High Court in **1983 ACJ 152** (**Kashiram Mathur and others vs. Sardar Rajendra Singh and another**). The Division Bench of the Madhya Pradesh High Court unfortunately omitted to note the

vital distinction between the nature of policy involved (Mediclaim policy) and the policy considered by the Full Bench of the said Court (Life Insurance Policy) and simply held that no deduction of the amount obtained under the Mediclaim policy was justified . In fact, in the verdict passed by the Full Bench of the Madhya Pradesh High Court, it was held that there shall not be any deductions in respect of the amount, which is received under the (1) Life Insurance Policy; (2) Provident Fund; (3) Family pension; and (4) Gratuity. In respect of 'Ex-gratia' payment,, the Full Bench held that the same was deductible . The amounts under the above 'four' heads stand on a different footing and it is not an advantage by reason of death/accident.

11. These aspects were infact considered by a Division Bench of the Karnataka High Court pursuant to the reference made , doubting the decision rendered by a Single Bench of the Karnataka High Court in *Shaheed Ahmed vs. Sankaranarayana Bhat* (ILR 2008 Karnataka 3277) . It was accordingly held by the Bench in *the New India Assurance Company Limited vs. Manish Gupta and others*

[2013 (1) Karnataka Law Journal 624] explaining the significant difference in between and observing that the very concept of insurance is not to extend any unlawful enrichment to anybody in respect of the very same cause of action. The purpose of insurance is only to place the party to the same level from where he suffered the downfall because of the contingency occurred. The observations made by the Division Bench of the Karnataka High Court in paragraphs 18, 19,20 and 22 are in the following terms:

18. The tests to be applied for dertermining the 'pecuniary advantage' which has to be deducted from the amount of compensation in a case of death are :

(1) Onus is on the insurer to establish that some pecuniary benefit or reasonable expectation of pecuniary benefit to the claimants, is resulting from the death of the deceased.

(2) Damages to be awarded to the claimants are compensatory and not punitive. Therefore, the test that no advantage should accrue to the wrong

doer would not be applicable.

(3) Where death has merely accelerated the receipt of benefits, which the claimants would have in any case, received at some future date in such cases pecuniary benefits come to the claimants not by reason of the death. The pecuniary advantage received by the claimants is the advantage gained by acceleration of their interest.

(4) Benefits received from the employer in some cases may be held to come to the claimants by reason of death. But, if the benefits are shown to have been received merely out of consideration for these claimants, e.g., contributions by co-workers to relieve the needs of the claimants, then such benefits cannot be held to have been received merely by reason of death of the deceased.

(5) Lastly, if there is any doubt as to whether the balancing principle extends to any class of benefit not covered by any binding authority, the doubt has to be resolved in favour of the claimants

inasmuch as in such a case the defendant must be held to have failed to discharge the burden placed on him to justify such deduction

19. With reference to the deductions under the Medclaim, a Division Bench of the Madhya Pradesh High Court in the case of Madhya Pradesh State Road Transport Corporation V/s. Priyank reported in 2000 ACJ 701, placing reliance on the full Bench decision has observed that the amount received by the insured under the Medclaim Policy is not deductible inasmuch as the claimant has received these amount under the contract of insurance, for which had paid premium. We are unable to persuade ourselves agree to the opinion rendered by the Division Bench of the Madhya Pradesh High Court, moreso having regard to the fact that the Full Bench had ruled and classified as to what are the amounts, which are deductible and the amounts which are not deductible.

20. Indeed an injured person cannot claim benefit out of his own misfortune. He cannot claim medical expenses under the Medclaim policy and also calim damages in the nature of amount expended for medical treatment under the claim petition, which

is filed under the Motor Vehicles Act. In similar, if not identical circumstances, a Division Bench of this court in the case of Karnataka State Road Transport Corporations V/s. Anantharam Singh reported in ILR 1996 KAR 1088 has observed that once a claim is satisfied with respect to the damages caused to the car by the insurer, the question of the owner of the car claiming damages as against the tort-feasor before the Claims Tribunal does not arise inasmuch as the cost of repair having been already recovered through the insurer, the claimant or the owner of the case cannot claim compensation under the claim petition filed under the Act. It is useful to extract the observations made by the Division Bench, which would read as under:

(xx xx xxx--omitted)

22. In the case on hand, the facts are almost similar. It is not in dispute that in all the claim petitions, the claimants had taken the Mediclaim Policies and they have claimed the amount under the policy. We are of the view that the question of the claimants claiming compensation in the claim petition, which is filed under the Act for the amount expended by them for the treatment, certainly cannot be granted. The medical expenses as observed, is

classified as a pecuniary loss. Pecuniary loss in its context means that the actual amount, which is expended by the claimant for treatment. If the said amount has been paid by the insurer under the Medclaim policy, the question of the claimant claiming the very same amount for the very same purpose, which is inclusive of the expenses, which are incurred by him for the hospitalization and for his treatment does not arise. Undoubtedly, if the amount, which is received by the claimant under the Medclaim policy falls short of the actual expenses expended by him, it is always open for him to claim the difference of amount spent from the Tribunal. But however he cannot claim compensation under both the Medclaim policy as well as the claim petition filed under the Act. The decision of the Apex Court in Hellen C. Rebello's case was in respect of the Life Insurance Policy and not in respect of a Medclaim Policy and therefore the said decision is distinguishable. ”

12. We are in full agreement with the views expressed by the Division Bench of the Karnataka High Court, and hold that the very purpose of insurance is to see that un-anticipated risk

is covered to the extent necessary, lest there should be any loss to the party concerned because of the unforeseen contingency which occurred during the policy period. As it stands so, if a party sustains damage in respect of a vehicle or was made to spend a certain amount for availing treatment in connection with the injuries and if the said amount is satisfied by the insurer under a separate policy issued in this regard (of course based on premium collected separately for the sum assured) the same is liable to be reckoned for fixing the quantum of compensation payable under the M.V. Act and if only a finding is rendered that loss is still there, could it be compensated to the requisite extent. To put it more clear, if the party has obtained only a lesser amount under the 'Mediclaim policy' taken by him (paying premium separately), the balance amount, if any, could very well be claimed in the claim petition to be preferred before the Tribunal with reference to the statutory coverage.

13. Then a question may arise, whether this by itself will be sufficient to make up the loss. It is important to note that the

'Mediclaim policy' was obtained by the party after paying the premium. If a portion of the sum assured under the Mediclaim Policy has already been satisfied, he will be entitled to coverage only in respect of the balance sum assured during the remaining period/tenure of the policy. If he meets with any other accident or suffers from any other disease in the meanwhile, he cannot aspire anything more. At the same time, the Insurance Company who has issued policy to cover the statutory risk under the M.V. Act becomes a gainer .

14. In the instant case, both the policies have been issued by one and the same Insurance Company. According to the learned Counsel for the Insurance Company, the mischief was brought to light only when the claimant was required to produce the original bills before the Tribunal so as to sustain the claim; when he had to produce a certificate issued by the Insurer as Ext.A8, to the effect that a sum of Rs.78418/- (as claimed in the claim petition before the MACT) had already been obtained by him on producing the original bills before the Insurance

Company under the Mediclaim Policy. It was in the said circumstance that the said amount was sought to be set off.

15. The amount actually spent by the insured and the loss, if any, sustained because of the accident is the cause of action to be considered. It is true that a sum of Rs.78418/- had to be spent by the party towards medical expenses because of the injuries sustained in the accident, which however stands compensated by the Insurance Company, though under a separate policy. This being the position, there is no other instance, which is liable to be compensated with regard to the injuries sustained in the accident, but for the expenses incurred by the party in having satisfied the premium for obtaining the Mediclaim Policy. Nothing prevented the party from retaining the Mediclaim Policy intact and to have claimed the entire benefit in respect of the injuries sustained in the accident under the policy issued in respect of the offending vehicle, before the Tribunal. But having chosen to obtain the due amount under the 'Mediclaim policy'; thus making him to be placed back on the same

pedestal, where he was standing before sustaining the accident, the insured is not liable to be heard to say that amount is liable to be paid under other policies as well, in respect of the same cause of action; which otherwise will only amount to unlawful enrichment.

16. The remaining aspect is with regard to the 'premium' already satisfied by the party for obtaining the 'Mediclaime Policy' as mentioned above. The learned Counsel for the appellant Insurance Company submits that no contingency, as apprehended has taken place as there was no case for the claimant at any point of time during the subsistence of the policy, that any claim preferred before the Insurance Company was declined or restricted to a lesser extent, referring to satisfaction of the amount towards medical bills in respect of the injuries sustained in the road traffic accident. Still, it is stated by the learned Counsel for the Insurance Company that the Company is ready to give credit to the 'premium' satisfied by the claimant for obtaining the 'Mediclaime policy' during the relevant year which

amount could be treated as an expense and claimed before the Tribunal.

17. In the said circumstance, this Court declares that the Insurance Company is entitled to 'set off' the amount in respect of the medical bills with regard to the same injuries under the Mediclaim Policy, except to the extent of 'premium' satisfied under the Mediclaim Policy. Reference stands answered accordingly. The award passed by the Tribunal is modified and the liability of the Insurance Company is scaled down to the above extent. Judgment passed by the learned single Judge , as reported in **2011 (2) KLT 20 (cited supra)** stands overruled.

Appeal stands allowed. No cost.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**