IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2015

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

and

THE HON'BLE MR. JUSTICE M. VENUGOPAL

C.M.A. No.2232 of 2015

M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Co. Ltd.,
"Sundaram Towers",
Nos.45 & 46, Whites Road,
Chennai-14. .. Appellant

vs

1.M.Satya Rao
2.M.Purushotham .. Respondents

Appeal against the fair and decretal order dated 27.01.2015 passed in M.C.O.P.No.5401 of 2011, on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant .. Mr.N.Vijayaraghavan

For Respondents.. Mr.V.Mohan Choudary

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

The only question, called upon by Royal Sundaram Alliance Insurance Company Ltd., appellant herein, in this appeal is, whether the first respondent/injured is entitled to seek for medical reimbursement of Rs.8,72,120/-, spent by his son, employee of HPCL, from the tortfeasor and consequently the appellant insurer, when the son of the first respondent is said to have availed the medical benefit from his employer HPCL. Medical expenditure incurred by the injured has been paid by the employer of his son, under medi-claim, a social security policy, available to the employee.

2. There is no dispute that the first respondent/claimant had incurred a sum of Rs.8,72,120/-. The insurer had investigated and verified that a sum of Rs.7,94,866.95 ps. had already been paid by HPCL. Therefore, the appellant insurer had contended that the actual balance/medical expenses to be paid by the company is Rs.43,334/- only.

3. Upon perusal of Ex.R-1 series, letter dated 30.07.2013 and Inpatient Bill Summary, spoken to by R.W.1, witness examined on behalf of the company, the Claims Tribunal has noticed that a sum of Rs.7,94,866.95 ps., has already been paid by HPCL and the balance amount of Rs.43,334/- was paid by the injured.

4. Before the Claims Tribunal, the appellant insurer has contended that the claim for medical expenses is not like LIC, where premium is paid by the insured, and on maturity, the sum assured under the policy is repaid with dividend to the assured, or in the case of death prior to maturity, paid to the legal representatives of the assured; and whereas, medi-claim or medical expenses, are reimbursed to the surviving injured and to the legal representatives of the deceased, in case of death. The appellant insurer has also contended, that the life insurance policy is by a contract of insurance repayable, in case of survival or death and that in case of mediclaim policy, reimbursement is made by the insurer. Reimbursement of medical expenditure can be sought for, against the insurer of mediclaim policy, for the actual expenditure incurred, and if the said insurer reimburses the expenses incurred by the insured or the legal representatives of the deceased, then, the surviving victim or the legal representatives cannot seek for reimbursement of the very same expenditure from the tortfeasor or the insurer of the offending vehicle, as it would amount to double payment under the head 'medical expenditure'. It is also the contention of the appellant, that all the payments received by the claimant, only by reason of the accident, shall have to be deducted from the compensation received.

5. However, by placing reliance on the decision in the case of Helen C.Robello v. Maharashtra State Road Transport Corporation Limited, 1999 ACJ 10 (SC), considered in United India Insurance Company Limited v. Patricia Jean Mahajan and Others, 2002 ACJ 1441, and a decision of a learned single Judge in National Insurance Company Limited v. C.Ramesh Babu and another, 2014 ACJ 1674, and taking note of the fact that an appeal preferred by the insurance company therein, against the abovesaid decision has been dismissed by the Hon'ble Apex Court and that the verdict of this Court, has become final, the Claims Tribunal has rejected the contention of the appellant herein, and consequently, held that the respondent/claimant is entitled to get the medical expenses reimbursed, though part of the amount has already been reimbursed by the employer of his son, viz., HPCL.

6. While reiterating the above arguments, Mr.N.Vijayaraghavan, learned counsel for the appellant, has relied upon the decisions made in Bazaz Alliance General Insurance Company Limited, v. Ganapat Rai Sehgal, reported in 2013 ACJ 2366 (New Delhi); Cholamandalam MS General Insurance Company Limited v. A.Saravanan and another, reported in 2013 ACJ 1437 Madras High Court (Madurai Bench); National Insurance Company Limited v. Deepmala Goel, reported in 2013 ACJ 2382 and National Insurance Company Limited v. R.K.Jain, reported in 2013 ACJ 2609. He also invited the attention of this Court to a contrary decision in National Insurance Company Limited v. C.Ramesh Babu, reported in 2014 ACJ 1674, (Madras Bench), wherein, a learned single Judge, by observing that reimbursement of medical expenses is pursuant to an independent contract, entered into between the claimant and the insurance company, and any settlement of claim thereunder can have no bearing on the right of the claimant, to seek for compensation towards medical expenses, in a claim under the Motor Vehicles Act. The learned single Judge has referred to the decision in Helen C.Robello v. Maharashtra State Road Transport Corporation Limited, 1999 ACJ 10 (SC). Now, there are two judgments of this Hon'ble Court, rendered by two learned single Judges, on the same issue, regarding the entitlement of the claimant (1) for reimbursement of medical expenses, incurred by him under a separate contract of mediclaim policy, from the insurer, and (2) whether there is no corresponding right to seek for reimbursement from the insurer of the offending vehicle, for the same amount.

Heard the learned counsel for the parties and perused the materials available on record.

7. The House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd., reported in 1942 AC 601, has quoted 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"

In the said decision, Lord Wright has further observed 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."

In Davies's case (cited supra), a reference has been made to the decision in Hodgson v. Trapp reported in (1988)(3) All ER 870, wherein, it has been observed as follows:

> ".....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."

8. In R.D.Hattangadi v. Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755, the Apex Court laying down the principles, has stated thus,

> "Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship,

discomfort, disappointment, frustration and mental stress in life."

9. In Helen C. Rebello v. Maharashtra State Road Transport Corporation reported in 1999 ACJ 10 (SC), the Hon'ble Supreme Court observed as follows:

> "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."

10. In United India Insurance Co. Ltd., v. Patricia jean Mahajan reported in 2002 ACJ 1441, the Hon'ble Apex Court observed as follows:

> "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."

11. In Cholamandalam MS General Insurance Co. Ltd., v. A.Saravanan reported in 2013 ACJ 1437, Hon'ble Mr. Justice R.Subbiah, a learned single Judge of this Court has considered, as to whether, the claimant, who suffered injuries, incurred medical expenses, reimbursed by Star Health Insurance, under Medi-Claim Policy, is entitled to claim the said amount, once again from the appellant-Insurance Company therein, insurer of the tortgeasor. After considering the decisions of the Apex Court in Helan C. Rebello's case (cited supra) and Patricia jean Mahajan's case (cited supra) and a decision of the Bombay High Court in Vrajesh Navnitlal Desai v. K.Bagyam reported in 2006 ACJ 65 (Bombay), at Paragraph 8, held as follows:

> "At this stage, it would be appropriate to refer the decision relied on by the 1st Respondent, namely, Helen C. Rebello and others v. Maharashtra State Road Transport

Corporation and another, 1999 ACJ 10: 1999 (1) LW 208. On going through the said judgment, I find that in that case, Life Insurance Policy was taken. So far as the Life Insurance Policy is concerned, the amount could be received either by insured after the maturity or by his heirs after hi a death, which may be accidental or otherwise, on account of the contract, for which the insured contributed in the form of premium. But, in the instant case, it is only a Medi-Claim Policy, which is valid for a particular period and on expiry of period, automatically the Policy lapses and any amount received out of such Insurance is liable to be deducted. Further, the said Policy covers only for a specific purpose, namely, reimbursing the amount spent by the victim towards his Medical Treatment. Once the amount is reimbursed, the Claimant is not entitled to get the same under the name of compensation because it would amount to double compensation."

At Paragraph 10, the learned single Judge of this Court has further held as follows:

"10. The principle enunciated in the said decision is a fitting answer to the issue involved in this Appeal that in case the Claimant receives the benefit, as a consequence of injuries sustained, then he is not entitled for the same as compensation once again. But it does not cover the cases where the amount of payment received is not dependent upon the injury sustained on meeting with the accident. Therefore, in my considered opinion, the case relied by the learned Counsel for the 1st Respondent, which was rendered based on the LIC Policy, cannot be made applicable to the facts of the case. So far as LIC Policy is concerned, the Policy holder is entitled for the payment of entire premium on maturity or the heirs are entitled for the payment in the event of his death. The payment under the Life Insurance Policy does not depend upon the injury sustained in meeting with the accident. On the other hand, as far as the Medi-Claim Policy is concerned, the amount is payable to the Claimant when he sustained injuries in an accident. Hence, the compensation for the injuries sustained by him under the head "Medical Treatment" cannot be granted."

12. In New India Assurance Co. Ltd. v. Manish Gupta reported in 2013 ACJ 2478, on reference, a Hon'ble Division Bench of Karnataka High Court, has been called upon, to decide, as to whether, the amount received in the Medi-Claim Policy, should be deducted from compensation, claimed under medical expenses, incurred by the injured. While considering the issue, as to whether, the compensation claimed and reimbursed by the insurer, under the Medi-Claim Policy and whether, such benefits should be set-off against the financial loss,

alleged to have been suffered, on account of the injuries and treatment, the Hon'ble Division Bench considered the principles of law, applied by the English Courts, decided in British Transport Commissioner v. Gourley reported in 1955 (3) All E.R. 796 and Hussain v. New Taplow Paper Mills Ltd., reported in 1988(1) All.E.R 541 and referred to the decision of the Apex Court in Helen C.Rebello and others v. Maharashtra State Road Transport Corporation and Another reported in 1999 ACJ 10 and the earlier Hon'ble Division Bench of Karnataka High Court in Harkhu Bhai v. Jiyaram reported in 2005 ACJ 1332 and at Paragraph 22 of the judgment, held as follows:

> "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 petitions, 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 Mediclaim 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 hospitilization and for his treatment does not arise. Undoubtedly, if the amount, which is received by the claimant under the Mediclaim 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 Mediclaim 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 Mediclaim policy and therefore the said decision is distinguishable."

It is also worthwhile to extract few paragraphs from Manish Gupta's case (cited supra), as follows:

> "10. When considering whether an item should be set off, it helps to go back to basic principles. Damages for financial loss are assessed so as to give compensation for the actual loss in money which the claimant has sustained or will sustain. In the case of British Transport Commissioner V/s. Gourley reported in 1955 (3) All E.R. 796 has observed thus:

"The basic principle, so far as loss of earnings and out of pocket expenses are concerned, is that the injured person should be placed in the same financial position so far as can be done by an award of money as he would have been had the accident not happened..."

11. The second question arises when, because of the accident, the claimant would receive some benefit, which he would not otherwise have received. There is no such universal rule that all such benefits should be set-off as against financial loss. Prima facie, it has been said, such a benefit should be taken into account to arrive at the total loss, but there are number of exceptions.

16. A learned Single Judge of this Court in the case of Binup Kumar R. V/s. Prabhakar H.G. and another reported in 2010 ACJ 2742 was of the view that the claimants cannot get the benefit both under the Mediclaim policy as well as under the Act. The learned Single Judge has also drawn an analogy in the case of a Government Servant inasmuch as whatever the amount a Government Servant gets reimbursed from his employer, the said amount will be deducted from out of the total amount arrived at by the Tribunal and the balance will have to be paid to him. On the same lines, whatever the amount the claimant gets from any scheme like Mediclaim etc., the said amount will have to be deducted from the actual amount payable to the claimant.

In Manish Gupta's case (cited supra), the Hon'ble Division Bench of the Karnataka High Court, also considered that if the claimant had already received compensation for the damages from his vehicle insurer, caused to the vehicle, whether it would be open to the claimant to once again claim the same amount from the tortfeasor and consequently, his insurer. It is also worthwhile to extract few paragraphs from Manish Gupta's case (cited supra), as follows:

20. ..In similar, if not identical circumstances, a Division Bench of this Court in the case of Karnataka State Road Transport Corporation 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 car 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:

"In the above state of evidence, we find no justification for the Tribunal to award a compensation of Rs.50,754.50 to the respondent herein. It is not the case of the respondent that he had incurred any expenses towards the repair charges of the damaged car, nor it is his case that he had suffered any loss on account of the sale of the damaged car to any person. On the other hand, it appears to be a case where the Insurance Company, with whom the car had been insured at the time of the accident, had settled the entire claim of the deceased owner of the car as well as the liability of the Bank, with whom the car had been hypothecated for the loan borrowed by the deceased. There is also a positive admission by P.W.1 himself that the case was taken over by the Insurer itself and that he had never become the R.C. Holder of the car. That being so, we are unable to sustain the Award made by the Tribunal in favour of the present respondent."

21. In fact an identical question fell for consideration before another Division Bench of this Court in the case of Harkhu Bhai and others V/s. Jiyaram and others reported in 2005 ACJ 1332 wherein two trucks were involved in an accident causing damage to the property. A claim petition was lodged under Section 166 of the Motor Vehicles Act. The Division Bench observed that when the owner of the Truck received compensation in full and final settlement of his claim from the Insurance Company, the question of he claiming compensation for an identical relief under the Act in a claim petition does not arise. It is useful to extract the observations made by this Court:

It is not in dispute that the vehicle owned by the claimant in M.V.C. No.3 of 1990 had suffered extensive damage on account of the collision but it is also admitted that the vehicle being insured with one of (sic.) the other insurance companies, the damage was assessed and paid. The order passed by the Tribunal further shows that the payment was received by the claimant in full and final settlement of his claim without any reservation or demur. In the absence of any material to show that the claim paid by the other insurance company represented a part only of the total damage, the Tribunal was justified in rejecting the claim for any further payment."

On the contention that in Helen C.Rebello's case, the Hon'ble Supreme Court has held that there should not be any deduction of compensation, when the deceased had received amounts under LIC, distinguishing the Apex Court's decision, the Hon'ble Division Bench of Karnataka High Court, held as follows:

"The Apex Court has emphatically observed that the amount received by the claimants under the Life Insurance Policy is not at all deductible. Undoubtedly, the deceased therein had taken a Life Insurance Company Policy to which the deceased had contributed substantially every year, which is more popularly called as premium. Any amount, which is received or receivable by the claimants is 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."

It is also worthwhile to extract Paragraph 18 in Manish Gupta's case (cited supra), where the Hon'ble Division Bench of Karnataka High Court, has set out the tests to be applied for determining the 'pecuniary advantage', which has to be deducted from the amount of compensation in a case of death, as follows:

"18. The tests to be applied for determining 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."

At Paragraph 20, the Karnataka High Court further held that indeed, an injured person cannot claim benefit out of his own misfortune and therefore, he cannot claim medical expenses under the Mediclaim policy and also claim damages in the nature of amount expended for medical treatment under the claim petition, which is filed under the Motor Vehicles Act.

13. In National Insurance Company Limited v. Deepmala Goel, reported in 2013 ACJ 2382, after considering a catena of decisions, at Paragraphs 3 to 6, held as follows:

"....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 Madhya Pradesh State Road Trans. Corpn., v. Priyank [2000 ACJ 701 (MP)]. 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."

4. In Jaswant Kaur Sethi v. Tamal Das, MANU/DE/3841/2009, Udam Singh Sethi v. Tamal Das, MANU/DE/3842/2009 and Bajaj Allianz General Insurance Co. Ltd., v. Ganpat Rai Sehgal, MAC.APP.No.191/2000 decided on 3rd January, 2012, this Court following the judgment of the Supreme Court in Patricia Jean Mahajan (supra) heldthat the claimant is not entitled to medical expenditure reimbursed under the medi-claim policy.

5. Following the judgment of the Supreme Court in the case of United India Insurance Company Limited (Supra) followed by the Madhya Pradesh High Court in Jitendra (Supra) and this Court in Jaswant Kaur Sethi (supra), Udam Singh Sethi (supra) and Bajaj Allianz General Insurance Co.

Ltd. (supra), it is held that respondent No.1 is not entitled to the amount of `64,139/- received by her under the medi- claim policy.

6. The learned counsel for respondent No.1 submits that the Claims Tribunal has awarded interest @ 6% per annum. However, the appropriate rate of interest in terms of the judgment of the Supreme Court in the case of Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors., AIR 2012 SC 100 is 9% per annum. The rate of interest awarded by the Claims Tribunal is enhanced from 6% per annum to 9% per annum. Respondent No.1 shall be entitled to adjust the enhanced interest by virtue of this judgment before making the refund of the excess amount."

14. In National Insurance Co. Ltd., v. R.K.Jain reported in 2013 ACJ 2609, the question that came up for consideration before a learned single Judge of the Delhi High Court was whether, the amount received under the personal insurance is deductible from the amount awardable under the Motor Vehicles Act. After considering the decision in Helen C.Rebello's case (cited supra) and other decisions, the Delhi High Court held that the claimant is not entitled to receive both.

15. In National Insurance Company Limited v. C.Ramesh Babu and another reported in 2014 ACJ 1674, this Court (The Hon'ble Mr. Justice C.T.Selvam) held as follows:

"The reimbursement of medical expenses is pursuant to an independent contract entered into between the claimant and the insurance Company. Settlement of a claim thereunder can have no bearing on the right of the claimant to seek compensation towards medical expenses in a claim under the Motor Vehicles Act. In saying so we would follow Helen C. Rebello v. Maharashtra State Road Trans. Corpn., 1999 ACJ 10 (SC)."

16. As rightly contended by the appellant, the claim for medical expenses is not like LIC, where premium is paid by the insured, and on maturity, the sum assured under the policy is repaid with dividend to the assured, or in the case of death prior to maturity, paid to the legal representatives of the assured; and whereas, medi-claim or medical expenses are reimbursed to the surviving injured and to the legal representatives of the deceased, in case of death. Life insurance policy is by a contract of insurance is repayable in case of survival or death and that in case of mediclaim policy, reimbursement is made by the insurer. In the case of mediclaim, reimbursement of medical expenditure can be sought for, against the insurer of mediclaim policy, for the actual expenditure incurred, and if the said insurer reimburses the expenses incurred by the insured or the legal representatives of the deceased, then, the surviving victim or the

legal representatives cannot seek for reimbursement of the very same expenditure from the tortfeasor or the insurer of the offending vehicle, as it would amount to double payment under the head 'medical expenditure'.

17. When the loss of future earning was claimed by the legal representatives, the Hon'ble Supreme Court in Helen Rebello's case (cited supra), held that death due to accident has nothing to do with the coverage under LIC Policy and, therefore, held that it is contract. Whether it the death is due to accident or natural or on attaining maturity, the sum assured has to be paid by the insurer LIC, whereas, in the case of mediclaim policy, the actual expenses incurred is reimbursed to the injured policy holder or the legal representativess of the deceased policy holder, only during the subsistence of the policy and that there is no case of maturity. If there is no claim during a relevant period, no amount is reimbursed. If the insurer of the mediclaim policy holder, under the contract of insurance, reimburses the medical expenses incurred, whether the injured can still be said to have suffered any monetary loss, under the head medical expenses? Monetary loss sustained by the injured or the legal representatives of the deceased, has to be compensated. But when the insurer of mediclaim policy, reimburses the monetary loss, suffered on medical expenses, then, can the injured get the same amount, which he has received under mediclaim policy, from the offender or the insurer, on the principle of vicarious liability, and whether it would amount to double compensation, under the same head, from two insurers, we are of the view that the issue has to be decided with reference to the expression 'just compensation' and the actual loss sustained by the claimant must be assessed, with reference to the amounts received by him, which he would not be otherwise entitled to, but for the accident.

18. Amounts received under the head, medical expenses or reimbursed, has to be set off, while estimating the actual monetary loss and consequently, the ultimate quantum of compensation. Even in Helen Rebello's case (cited supra), the Hon'ble Supreme Court has observed that where the employer insurers 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. Thus, even in Helen Rebello's case (cited supra), a distinction between Life Insurance Policy and other Insurance Policy, taken by the employer for his employee, has been taken note of. When the injured has already been reimbursed by the employer of his son for the medical expenses incurred, can it be still contended that there was a pecuniary loss? Can it be claimed from the insurer of the offending vehicle, as if it was spent by him? and thus there was a monetary loss to be compensated. In the light of the above discussion, we are of the considered view that the claimant/injured is entitled only to the amount spent and suffered as monetary loss.

19. In the case on hand, the injured has not incurred any monetary loss, as the employer of the son of the injured has paid the hospital and medical charges, under the policy of the employee. While that is the fact situation, the claim of the respondent/claimant under the head, medical expenses, would be an amount, which has not been expended by him. Though it is claimed that the employee pays a separate premium under the mediclaim policy and that, a contention can be made that it is separate contract with the insurer, not being the insurer of the tortfeasor, against whom a claim for compensation is made, but when the expenses incurred have been reimbursed, it cannot be said that the claimant has suffered any pecuniary loss on account of the expenses incurred for the injuries and treatment.

20. Having regard to the nature of injuries, extent of disablement and other factors, required to be taken into consideration, for awarding a just and reasonable compensation, in terms of the decisions of the Apex Court, Mr.N.Vijayaraghavan, learned counsel appearing for the appellant-Insurance Company fairly conceded that the overall compensation under the head, medical expenses, be rounded off, at Rs.8,00,000/-. Submission is placed on record. Mr.V.Mohan Choudary, learned counsel appearing for the first respondent, also agreed for reduction, as stated supra.

21. In the light of the above discussion and decisions, taken note of, the quantum of compensation under the medical expenses, is reduced to Rs.8,00,000/-. However, this Court is inclined to award Rs.5,000/- towards loss of estate and Rs.1,000/- for damages to clothes and articles. The appellant-Insurance Company is directed to deposit the amount of Rs.5,09,000/-, now determined by this Court, with interest at the rate of 7.5% per annum, with costs, excluding the statutory deposit already made to the credit of M.C.O.P.No.5401 of 2011, on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, on the file of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai, within a period of four weeks, from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by filing necessary applications before the Tribunal.

22. In the result, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petition is also closed.

skm



Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal
(V Court of Small Causes), Chennai.

+1 C.C. To MR.K.Varadhan Kamaraj, Advocate in SR.NO.53128

+1 C.C. To N.Vijayaraghavan, Advocate in SR.NO.54165

+1 C.C. To MR.V.Mohan Choudary, Advocate in SR.NO.54124

C.M.A.No.2232 of 2015

Lrs(CO)
sd : 26/10/2015