

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.9763 of 2015
Date of Decision:19.09.2016**

National Insurance Co. Ltd.Petitioner

Vs.

Shashank Bhardwaj and anotherRespondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Nitin Gupta, Advocate for the petitioner.

Mr. Rakesh Dhiman, Advocate for respondent No.1.

RAKESH KUMAR JAIN, J.(Oral)

This petition is filed in order to challenge the order/ award dated 26.2.2015 passed by the Permanent Lok Adalat (PUS) Gurgaon (hereinafter referred to as 'the Lok Adalat').

In brief, respondent No.1 obtained a mediclaim policy from the petitioner for the period from 18.3.2012 to 17.3.2013 for a sum of ₹3 lacs. Respondent No.1 met with an accident on 4.6.2012. His right eye was damaged. He was taken to Paras Hospital, Gurgaon where he remained as an indoor patient from 4.6.2012 to 24.6.2012 and spent a sum of ₹5,16,370/- on his treatment. The amount claimed by respondent No.1 from the petitioner on the basis of the mediclaim policy was turned down and hence, he filed an application under Section 22(c) of Legal Services Authority Act, 1987 (for short, 'the Act') before the Lok Adalat for payment of the

insurance amount of ₹3 lacs with interest. The application has been allowed by the Lok Adalat on 26.2.2015 directing the petitioner to pay ₹3 lacs within 40 days failing which the petitioner was made liable to pay interest at the rate of 9% per annum on the said amount from the date of application till the date of payment.

Counsel for the petitioner has submitted that respondent No.1 had also filed an application under Section 166 of the Motor Vehicles Act, 1988 against the driver, owner and Insurance Company of the offending vehicle. The said application/ MACT Case No.87 of 2012 is decided in favour of respondent No.1 by the MACT Tribunal, Gurgaon (for short, 'the Tribunal') and a sum of ₹7,72,300/- is awarded which includes medical bills of ₹5,91,800/-. Counsel for the petitioner has submitted that since respondent No.1 has been paid the expenditure incurred by him in his treatment by the Tribunal, the amount of ₹3 lacs is not liable to be paid by the petitioner as it would amount to double payment towards medical treatment and a case of unjust enrichment. In support of his submission, he has relied upon decision of the Delhi High Court rendered in the case of National Insurance Co. Ltd. v. Shiela Avinashi and others, 2014 ACJ 320, decision of the Madras High Court (Madurai Bench) in the case of Cholamandalam MS General Insurance Co. Ltd. v. A. Saravanan and another, 2013 ACJ 1437 and a decision of the Supreme Court rendered in the case of United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others, (2002) 6 Supreme Court Cases 281.

On the other hand, counsel for respondent No.1 has submitted that there is no error in the order of the Lok Adalat as the amount to be paid

under the policy is independent of the award of the Tribunal because the compensation payable under the Motor Vehicles Act is statutory while the amount received under the Insurance Policy is contractual. In support of his submission, he had relied upon a decision in the case of Helen C. Rabello v. Maharashtra State Road Transport Corpn., 1998(4) R.C.R. (Civil) 177, and a Division Bench judgment of this Court in the case of Reliance General Insurance Company Limited v. Purnima and others, 2013(2) R.C.R. (Civil) 42.

I have heard learned counsel for the parties and perused the record with their able assistance. The respondent No.1 had obtained mediclaim policy for family by paying one time premium of ₹10,690/-. The period of the policy was for one year w.e.f. 18.3.2012 till midnight of 17.3.2013. Admittedly, respondent No.1 suffered the accident during the currency of the policy and was hospitalized. He tendered medical bills amounting to ₹5,91,800/- before the Tribunal claiming the amount spent by him for his treatment for the injuries suffered in the accident. The amount of medical bills has been allowed by the Tribunal while awarding compensation on the other heads as well. After the decision of the Tribunal dated 6.5.2013, the respondent filed an application under Section 22-C of the Act on 19.8.2013 before the Lok Adalat in order to recover ₹3 lacs on the basis of the policy for which he had paid one time premium of ₹10,690/-.

The Lok Adalat has allowed the application on the basis of the decision of the Supreme Court in the case of Helen C Rabello's case (supra) on the ground that the compensation ordered by the Tribunal is a statutory

right but the claim made before the Lok Adalat on the basis of mediclaim policy is a contractual right and thus the amount claimed by respondent No.1 cannot be deducted or denied. The question thus arises as to whether respondent No.1 is entitled to the amount under the policy after receiving the amount incurred by him on his medical treatment awarded by the Tribunal? The facts of the case of Helen C Rabello (supra) are that Mr. Rabello died in a vehicular accident and the appellants were awarded compensation by the Tribunal out of which the amount paid by the Life Insurance Corporation was deducted. The question before the Supreme Court was as to whether life insurance money of the deceased is to be deducted from the claimants' compensation receivable under the Motor Vehicles Act, 1939 ? The finding recorded by the Supreme Court in this regard is as under:-

“Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death.

The heirs receive family pension even otherwise than the

accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death

without making any contribution towards it, then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.

It was further held that “We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount should be accepted and other set, which interpreted to deduct, is to be rejected. For all these consideration, we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intents of the legislature under various provisions of the Motor Vehicles Act, 1939.”

In the case of Reliance General Insurance Company Limited (supra), the matter was placed before the Division Bench of this Court because of the conflicting views recorded in the case of New India Assurance Company Ltd. v. Smt. Santosh and others, 2010 (4) PLR 780 and Oriental Insurance Company Limited v. Saroj Devi and others, 2012(1) PLR 761. The issue involved was as to whether the compensation received from the Government under the Haryana Compassionate Assitance to the Dependents of Deceased Government Employees Rules, 2006 is to be

deducted from the total compensation payable to the dependants of the deceased who dies in an accident, while computing financial benefits, through ex-gratia payments by the Government.

In the case of Smt. Santosh (supra), the answer was in affirmative whereas in the case of Smt.Saroj Devi (supra), the view was otherwise. The Division Bench ultimately upheld the view taken in the case of Saroj Devi's case (supra) and held that the Insurance Company shall not be entitled to deduct the amount given to the dependants under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 while calculating the compensation payable under the Motor Vehicles Act.

On the other hand, in the case of National Insurance Company Limited (supra), the award of the Tribunal was challenged whereby compensation of ₹1,61,000/- was given and the Insurance Company was impugning the award to the extent of ₹82,247/- on the ground that the claimant has already received the said amount from the New India Assurance Company under a mediclaim policy. It was submitted that the claimant has not suffered any loss in respect of the said amount since she has received the said amount from the New India Assurance Company and award of the said amount to her amounts to double payment as well as unjust enrichment. The Court extensively discussed the decision of the Supreme Court rendered in the case of United India Insurance Co. Ltd. and others (supra) and held that the claimant could not be held entitled to be reimbursed under the medi-claim policy. In the case of Cholamandalam MS General Insurance Co. Ltd. (supra), award of the Tribunal was challenged by the Insurance Company in which a sum of ₹2,88,100/- towards the

medical expenses was awarded which was incurred by them but the stand taken by the Insurance Company was that ₹2 lacs had already been reimbursed to the claimant by the Star Health Insurance Company under the mediclaim policy and hence the claimant was not entitled to claim the said amount once again from the Insurance Company. The amount of ₹2 lac was ultimately ordered to be deducted. The relevant observations made by the Court are as under:-

“8. At this stage, it would be appropriate to refer to the decision relied on by the respondent No.1, namely, *Helen C. Rebello v. Maharashtra State Road Transport Corporation* 1999 ACJ 10(SC). 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 the insured after the maturity or by his heirs after his 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 mediclaim 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. In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the appellant in *Helen C. Rebello's* case (supra) and the relevant para is extracted hereunder:-

“(35) Thus, it would not include that which claimant receives on account of other forms of death, 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 (sic) 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 (sic and) in the course of employment of an employee.”

9. In *United India Insurance Co. Ltd. v. Patricia Jean*

Mahajan, 2002 ACJ 1441 (SC), the Hon'ble Apex Court has held as follows:-

“(24) ...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.”

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 on by the learned counsel for the respondent No.1, which was rendered based on the LIC policy, cannot be made applicable to the facts of the present case. So far as LIC policy is concerned, the policyholder 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 mediclaim policy is

concerned, the amount is payable to the claimant when he sustains injuries in an accident. Hence, the compensation for the injuries sustained by him under the head 'medical treatment' cannot be granted. Therefore, I am of the opinion that since the sum of ₹2,00,000/- has already been paid by Star Health Insurance Company, the respondent No.1 is entitled only for the balance amount of ₹88,100 out of ₹2,88,100 spent by him. Hence, the sum of ₹2,88,100/- awarded by the Tribunal under the head 'medical expenses' is reduced to ₹88,100. Consequently, the total amount of ₹3,83,100/- is hereby reduced to ₹1,83,100. Except this, the award passed by the Tribunal is confirmed in all other aspects.”

There is a difference between Life Insurance Policy and the mediclaim policy. The premium in the mediclaim policy is paid once which is for a particular period and the policy expires by efflux of time automatically and in case no untoward incident happens then the amount of premium paid is not refunded whereas in the case of Life Insurance Policy which is obtained for number of years, premium is regularly paid, the amount is reimbursed or otherwise in case of any untoward incident, the insured is paid the amount as per the policy, therefore, the respondent No.1 cannot rely upon the decision rendered in the case of Helen C Rebello's case (supra) or even the case of Reliance General Insurance Co. Ltd. (supra) in which it was held that the compensation received from the Government under the Haryana Compassionate Assistance to the Dependents of Deceased

in the policy. Thus, in the aforesaid facts and circumstances, the order passed by the Lok Adalat is held to be illegal and the same is hereby set aside.

September 19, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No