IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2664 of 2015

Usha .... Appellant/Petitioner

-vs-

1.K.Divakar

2.The Manager,
United India Insurance,
Company Limited,
No.48, 1st Floor, Arcot Road,
Saligramam,
Chennai 600 093. .... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 13.03.2015 passed in M.C.O.P.No.216 of 2013 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tiruvallur.

For Appellant : Mr.M.S.Subramanian

For Respondents: No appearance (For R1)
Mr.S.Arun Kumar (For R2)

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The claimant who suffered injuries in a motor accident that took place on 25.02.2012 is before us, seeking enhancement.

2.According to her, as a result of the accident, she suffered head injuries which had affected her eye sight. She also suffered other functional disabilities due to the injuries sustained by her in the accident. The Tribunal taking into account the disability certificates issued by the doctors, arrived at the functional disability of 60%, though as per the disability certificate, the total disability was 72%. The Tribunal deducted the amount received by the claimant/appellant under the Medi-claim policy taken by her, while granting the medical expenses. The Tribunal also rejected her claim based on Special Nursing availed by her during her treatment as in-patient in Apollo Speciality

Hospital, despite production of receipts for payment of Rs.84,800/- towards Special Nursing.

3.We have heard Mr.M.S.Subramanian, learned counsel appearing for the appellant and Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company.

4.Mr.M.S.Subramanian, would fault the award on four grounds:

(i).Deduction of the amounts received by her in the Medi-claim policy.

(ii).Rejection of the receipts produced for Special Nursing to the tune of Rs.84,800/- and

(iii).Absence of award of any amount for future medical expenses.

(iv).The reduction of disability to 60% from 72% assessed by the Doctor.

5.As regards the rejection of the amounts received by the appellant from the Medi-claim policy, Mr.M.S.Subramanian would rely upon the judgment of the Hon'ble Supreme Court in the case of Helen C.Rebello and others Vs. Maharashtra State Road Transport Corporation and another, reported in 1999 1 SCC 90, to contend that any amount received from other Insurance policy cannot be deducted.

6.In paragraphs 33 and 34 of the judgment cited supra, the Hon'ble Apex Court has observed as follows:

> "33.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, as 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 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 and in the course of employment of an employee.
>
> 34.This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is

> excluded, thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident.....”

This itself shows that the reduction of the amounts received by the appellant from the insurer under the medical insurance scheme should be deducted while deciding her claim for medical expenses. Therefore, the first contention of Mr.M.S.Subramanian will have to be rejected.

7.On the second question, the appellant has produced receipts numbering about 17, which evidenced payment of a sum of Rs.84,800/- towards Special Nursing Care. The Insurance Company has not disputed the genuineness of these documents. The Tribunal has chosen to reject the same on the ground that since the appellant was admitted to Apollo Speciality Hospital, she would have been provided nursing by the hospital itself and therefore, these payments cannot be taken into account while deciding the quantum of compensation, particularly under the head of medical expenses.

8.We are of the considered opinion that this conclusion of the Tribunal is not correct. We find from Ex.P10 that these receipts have been issued by M/s.Unique Home Health Centre, a subsidiary of Apollo Hospitals Limited. Therefore, the Tribunal was not right in rejecting those receipts for a sum of Rs.84,800/- paid by the appellant towards Special Nursing Care. Hence, the amount of Rs.84,800/- should have been awarded as compensation.

9.The 3rd contention of Mr.M.S.Subramanian is that no amount has been awarded towards future treatment. Admittedly, the appellant has eye defect, due to the accident which would require glasses even as per the report of the Agarwal's Eye Hospital, which has been produced as Ex.P8. She would be forced to replace her glasses through out her life time. Even though no documents have been produced to decide the quantum of future medical expenses, we are of the considered opinion that a sum of Rs.1,00,000/- would be just and reasonable towards future medical expenses. The Tribunal has awarded only Rs.5,000/- towards transportation charges. The appellant who is a resident of Poonamallee has been an in-patient in Malar Hospital, Adyar, Chennai as well as in Apollo Speciality Hospital at Nungambakkam, Chennai. Hence, she would have definitely spent more than Rs.5,000/- towards travelling expenses. Therefore, we enhance the amount awarded by the Tribunal towards travelling expenses to Rs.25,000/- from Rs.5,000/-.

10.The disability has been reduced by the Tribunal to 60% without assigning any specific reason for such reduction. From the details of the injuries as well as the disability certificates, it is seen that the disability has been arrived at 72% using the formula meant for calculation of the disability in cases of combined functional disabilities. We therefore see no justification for reducing the disability as assessed by the doctors and the disability certificates marked as Exs.P13 and P14, while sustaining the disability arrived by the doctors at 72%.

11.For the foregoing reasons, the award of the Tribunal needs modification and the same is modified as follows: Rs.1,20,000/- granted on the ground of functional disability is enhanced to Rs.1,44,000/-. A sum of Rs.1,00,000/- is granted towards future medical expenses. Rs.84,800/- is granted towards Special Nursing, as per the receipts filed as Ex.P10. The amount awarded towards transportation is increased to Rs.25,000/- from Rs.5,000/-. Hence, the total award is increased by Rs.2,33,800/-. The modified award will work out to Rs.11,52,717/-. The same is rounded off to Rs.11,53,000/-.

12.The appeal is allowed in part. The claimant will be entitled to Rs.11,53,000/- with 7.5% interest from the date of petition till the date of payment. It is stated that the amount awarded by the Tribunal has been paid over to the claimant. Therefore, the Insurance Company is directed to deposit the enhanced award amount, along with interest at the rate of 7.5% per annum within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa
To
1.The Motor Accidents Claims Tribunal,
III Additional District Judge, Tiruvallur.

2.The Manager,
United India Insurance,
Company Limited,
No.48, 1st Floor, Arcot Road,
Saligramam, Chennai 600 093.

3.The Section Officer
VR Section, High Court, Madras.

+2cc to Mr.M.S.Subramanian, Advocate SR.NO.60742
+1cc to Mr.S.Arunkumar, Advocate SR.NO.60991

AD(co)
sm:4.10.2018