

FAO No.4755 of 2016 (O&M),
FAO No.4759 of 2016 (O&M),
FAO No.5758 of 2016 (O&M) &
FAO No.3590 of 2016 (O&M)

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

1. FAO No.4755 of 2016 (O&M)
Date of decision : 17.08.2018

ICICI Lombard General Insurance Company Ltd. ...Appellant

Versus

Harminder Singh Rosha and others ...Respondents

2. FAO No.4759 of 2016 (O&M)
Date of decision : 17.08.2018

ICICI Lombard General Insurance Company Ltd. ...Appellant

Versus

Manmohan Kaur and others ...Respondents

3. FAO No.5758 of 2016 (O&M)
Date of decision : 17.08.2018

ICICI Lombard General Insurance Company Ltd. ...Appellant

Versus

Amanjot Kaur and others ...Respondents

4. FAO No.3590 of 2016 (O&M)
Date of decision : 17.08.2018

Manmohan Kaur ...Appellant

Versus

Sunil Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Ms. Vandana Malhotra, Advocate for the appellant
(In FAO Nos.4755, 4759 and 5758 of 2016) and
for respondent No.3 (In FAO No.3590 of 2016)

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Mr. Ashit Malik, Advocate with
Ms. Savita Rana, Advocate for appellant
(In FAO No.3590 of 2016) and
for respondent No.1 (In FAO Nos.4755 and 4759 of 2016)

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

By this common judgment, four appeals, three filed by the Insurance Company and one filed by the Injured-Claimant arising from one accident resulting in filing of three claim petitions disposed of by a common judgment shall stand decided.

In the considered opinion of this Court, two issues which need determination, are as follows:-

1. Whether an amount received by the injured-claimant or legal heirs of the deceased towards reimbursement of hospital charges on account of its own mediclaim policy, is liable to be adjusted while adjudicating the compensation payable under the head of medical expenses?
2. Whether an amount received by the insured from his own Insurance Company on account of damage to the vehicle, is liable to be adjusted while calculating the amount of compensation payable or not?

Let us first take the issue No.1:-

Arguments have been heard in detail from the learned counsel for the parties. Both the learned counsels have relied upon the various judgments passed by the different Courts taking divergent views. Hence, it has become necessary to deliberate on the issues in detail.

Learned counsel appearing on behalf of the injured, while relying upon the judgments passed by Hon'ble the Supreme Court in the case of **Helen C. Rabello Vs. Maharashtra State Road Transport Corporation, (1999) 1 SCC 90** and by this Court in the case of **Manoj Kumar Yadav Vs. Azad and others, 2015(3) Punjab Law Reporter 211,** has submitted that the amount received by the injured on account of mediclaim policy purchased by him or her cannot be adjusted, as this would amounts to giving the benefit to the wrong doers. The Motor Accident Claims Tribunal has also relied upon the judgments passed by the Gujarat High Court in the case of **Gujarat State Road Transport Corporation Vs. Hargovindas R. Modi and others, AIR 2007 (Gujarat) 39,** and by the Kerala High Court in the case of **National Insurance Company Limited Vs. Bijumon, 2012(1) RCR (Civil) 325,** to take a view that the aforesaid amount reimbursed to the claimant-injured is not liable to be adjusted while calculating the damages payable.

On the other hand, learned counsel for the Insurance Company while relying upon the judgment of this Court in **CWP No.9763 of 2015, decided on 19.09.2016, titled as National Insurance Company Limited Vs. Shashank Bhardwaj and another, reported as 2017(2) PLR 29,**

contends that such amount reimbursed by the Insurance Company to the claimant-injured, is liable to be adjusted, as the injured-claimant cannot be given double benefit. She also relied upon another judgment passed by this Court in the case of **Vishal Vs. Bugga Singh and others, 2016(3) Punjab Law Reporter 51.**

Let us first carefully examine the judgment of Hon'ble the Supreme Court in Helen C. Rabello's case (supra).

On careful examination of the judgment passed by Hon'ble the Supreme Court, it is apparent that Hon'ble the Supreme Court was dealing with the amount received by the legal heirs under a life insurance policy on the death of the policy holder in an accident. Hon'ble the Supreme Court has held that the life insurance policy is purchased for variety of reasons including investment so as to secure the future by way of forced saving. In India, even insurance policies are purchased for entitlement of deduction towards income tax liability. Life insurance policies are also purchased to secure a loan to cover the risk in the case of untoward incident happening. In para 17 of the judgment, the Court dealt with the reasons why the insurance policy is purchased. Thereafter in para 29 of the judgment, Hon'ble the Supreme Court dealt with the provisions of Motor Vehicles Act, 1939 and ultimately concluded that if the pecuniary advantage resulting from death is interpreted to mean pecuniary advantage coming under all forms of death then it will even include all the assets moveable, immovable, shares, bank accounts, case and every amount receivable under

any contract but such interpretation would result in saving a tort-feasor in spite of his wrongful act or negligence which contributes to the death.

In these circumstances, Hon'ble the Supreme Court held that the amount receivable on account of life insurance policy shall not be adjusted towards total compensation payable by the Motor Accident Claims Tribunal under the Motor Vehicles Act. Hon'ble the Supreme Court, however in para 33 of this very judgment has noted that the amount which claimant receives on account of injury or death irrespective of the fact that whether it is on account of an accident or not and otherwise in the event of non-happening of such incidence, no amount was payable/refundable, shall be liable to be adjusted. Para 33 of the judgment is extracted as under:-

*“33. 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 employees, 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 ”

Further this judgment has been followed by Hon'ble the Supreme Court in the case of **United India Insurance Company Limited Vs. Patricia Jean Mahajan (2002) 6 SCC 281**, wherein the Court has held while discussing the judgment of Hon'ble the Supreme Court in the case of Helen C. Rabello's case (supra) that idea is to grant the just compensation. Idea is not to over compensate the claimant. Para 26 and 36 of the judgment passed by Hon'ble the Supreme Court, specifically deal with the aforesaid issue. Further reference can be made to a recent judgment of Hon'ble the Supreme Court in the case of **Reliance General Insurance Company Limited Vs. Shashi Sharma and others (2016) 9 SCC 627**. Hon'ble the Supreme Court was dealing with the Rules framed by the State of Haryana to compensate the legal heirs of the employees who loses his life during service. In para 18 of the judgment, Hon'ble the Supreme Court dealt with the aforesaid issue and held that the idea is to award the just compensation but compensation cannot be treated as a largesse. Para No.18 of the judgment is extracted as under:-

“18. The principle discernible from the exposition in Helen C.Rebello case is that if the amount “would be due to the dependants of the deceased even otherwise”, the same shall not be deductible from the compensation amount payable under the 1988 Act. At the same time, it must be borne in mind that loss of income is a significant head under which compensation is claimed in terms of the 1988 Act. The component of quantum of “loss of income”, inter

alia, can be “pay and wages” which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependents of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the 2006 Rules- to grant compassionate assistance by way of ex-gratia financial assistance on compassionate grounds to the dependents of the deceased Government employee who dies in harness, it is unfathomable that the dependents can still be permitted to claim the same amount as a possible or likely loss of income to be suffered by them to maintain a claim for compensation under the 1988 Act.”

There are judgments of various High Courts taking one view or the other, however, in view of binding precedents of Hon'ble the Supreme Court, other judgments passed by the other High Court are not required to be discussed.

As regards the judgment of this Court in Manoj Kumar Yadav's case (supra), the same basically relies upon the judgment of Hon'ble the Supreme Court in Helen C. Rabello's case (supra). In para 11 of the judgment after placing a reliance, the Court did not further deliberate on the aforesaid issue. In Manoj Kumar Yadav's case (supra), neither the attention of the Court was not drawn to para 33 of the judgment passed in Helen C. Rabello's case (supra) nor to Patricia Jean Mahajan's case (supra).

However, once we examine the judgment passed by this Court in Shashank Bhardwaj's case (supra), this Court after taking into consideration the various judgments passed by the Courts including the

judgment of Hon'ble the Supreme Court in Helen C. Rabello's case (supra), held that there is fundamental difference between the life insurance policy and mediclaim policy. The premium in the mediclaim policy is paid once which is for a particular period and policy expires by efflux of time automatically and in case no untoward incident happens during that time, then amount of premium paid is not refunded, whereas in the life insurance policy, normally the amount is paid for a number of years regularly and thereafter amount is reimbursed on maturity or otherwise. In case of untoward incident, the injured or legal heirs are paid as per the policy. In these circumstances, the learned Judge took a view that the amount reimbursed to the injured-claimant on account of his or her own mediclaim policy would be liable to be adjusted.

Similarly, in Vishal's case (supra), this Court had also concluded that the amount of mediclaim policy recovered from the insurance company is liable to be adjusted.

The basis purpose of enacting the provisions for grant of compensation under the Motor Vehicles Act is to compensate the injured or to compensate the legal heirs for the loss which they have suffered on account of accident. However, such compensation cannot result in either unjust enrichment or bonanza for the injured or the legal heirs. The claimant cannot be allowed to make a fortune out of a misfortune. The Motor Vehicles Act, does not provide for double payment. As per Section 168 of the Motor Vehicles Act, 1988, Motor Accident Claims Tribunal is to

determine the amount of compensation which appears to it to be just. Just would obviously mean what is reasonable. The entire effort of the Court should be to compensate the injured in the case of injury or the legal heirs in the case of death and not to give bonanza to the claimant(s).

In view of the aforesaid discussions, respectfully following the judgments of Hon'ble the Supreme Court and this Court in Shashank Bhardwaj's (supra) and in Vishal's (supra), this Court has come to a conclusion that the amount received as a reimbursement on account of mediclaim policy towards the medical expenses including hospitalization charges, shall be liable to be adjusted while calculating the compensation payable on account of medical expenses.

At the most, the claimant(s), can be held entitled to the premium paid for purchasing the mediclaim policy because that was the amount which was invested by the injured or the deceased, as the case may be, so as to secure.

Let us examine the second issue:-

Similarly, taking the clue from the above discussions, this Court is also of the view for same reasons the amount received by the claimant(s) for damage to the vehicle from his own insurance company, is also liable to be adjusted as the claimant cannot be allowed to make a fortune out of a misfortune and it cannot result in bonanza or double to the claimant(s). Hence, issue No.2 is also accordingly decided.

Now let us examine the facts of the case:-

In the claim application filed by Harminder Singh Rosha, the Motor Accident Claims Tribunal has awarded ₹1,85,751/- on account of repair of the car. However, the Court did not choose to deduct ₹1,05,634/- paid by the insurance company on account of policy purchased by the claimant(s).

Keeping in view the discussion made above, the amount received by the claimant(s) from his own insurance company i.e. ₹1,05,634/- shall be liable to be deducted. However, the claimant shall be entitled to the amount of premium which has been paid by the claimant for purchase of the policy. Since no evidence in this respect come on the file, ₹10,000/- is awarded on this account to the claimant(s).

Now let us deal with the compensation payable to Amanjot Kaur, the injured. She has been awarded a sum of ₹78,122/-, out of which, major amount is on account of hospital charges including implant and medicine. It has been found by the Court that she got reimbursement from ICICI Prudential Life Insurance Company to the extent of ₹43,237/-. Keeping in view the discussion made above, amount of ₹43,237/- shall be liable to be deducted while calculating the compensation payable. However, she would also be entitled to the amount spent by her on purchase of the mediclaim policy. Since no evidence has been filed on this aspect, this Court awards ₹5,000/- on the basis of assumption.

Now let us deal with the case of Manmohan Kaur. She was 44 years of age, working as Insurance Agent (Advisor) for Max Life Insurance

Company Limited and was also imparting education by doing tuition work.

On account of the accident, her left leg had to be amputated. As per the Medical Board, she suffered permanent disability to the extent of 75%.

Learned Motor Accident Claims Tribunal has awarded a sum of ₹70,35,805/-. Insurance Company is pleading for reduction, whereas claimant is seeking for enhancement. It may be noted that in this case also, she had purchased the mediclaim policy and she was reimbursed to the extent of ₹4,56,763/- by ICICI Prudential Life Insurance Company, out of total sum of ₹11,92,050.89P, on account of medical expenses, therefore, the amount reimbursed by ICICI Prudential Life Insurance Company shall be liable to be adjusted. Amount spent by the claimant(s) on purchase of mediclaim policy shall be liable to be refunded. But since no evidence has been led, hence, claimant(s) is held entitled to ₹10,000/- on this aspect.

Learned counsel appearing for the Insurance Company has submitted that the Motor Accident Claims Tribunal has assessed the income on the basis of the Income Tax Return filed after the date of the accident. She submitted that the accident took place on 14.07.2013 whereas Income Tax Return has been filed on 30.08.2013.

On the other hand, learned counsel for the claimant(s) while drawing the attention of the Court to Income Tax Return for the financial years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and 2013-2014, has submitted that claimant(s)-appellant(s) has been consistently showing increase in the income and the Income Tax Return filed after the date of

accident does not show any unreasonable increase as compared to the previous years. He further submitted that Income Tax Return will always be filed after the financial year is over and, therefore, there is no substance in the arguments of the learned counsel for the Insurance Company.

This Court has analyzed the arguments of the learned counsel for the parties. The assessment made by the learned Motor Accident Claims Tribunal, after taking into consideration the increase in the income, as is depicted from Income Tax Return which was being consistently filed much before the accident, clearly proves that the income of the injured had been increasing consistently and there is no untoward or unreasonable leap in the Income Tax Return filed for the assessment year 2013-14. Hence, the Motor Accident Claims Tribunal has not committed an error on that account.

Learned counsel for the appellant-Insurance Company further submitted that on careful examination of the Income Tax Return of the year 2007-08, it is apparent that the income which has been shown by the injured is from tuition work. She further drew attention of the Court to the Income Tax Return which was filed for the financial year 2012-13 (Assessment year 2013-14) in which ₹1,00,357/- has been depicted to have been received from the Max Life Insurance Company Limited as commission. Hence, she submitted that the entire income cannot be treated as an income derived from the business of Insurance Agency. She submitted that the tuition work can be continued by the injured without much movement.

This Court has examined the aforesaid contentions with reference to the evidence available on the file. Injured has been examined as PW3. She has claimed that she is a graduate. No doubt, as per the Income Tax Return for the counting year 2006-07, the entire income is from tuition work, however, position is not clear from the papers filed with regard to the income tax for the financial year 2007-08, 2010-11, 2011-12. In any case, even if the major part of the income was from tuition work, claimant was not highly qualified which may necessarily attract the student at her residence. Some teachers have to visit the institute or teachers also provide the facility of tuition at the residence of the students. That itself involves a lot of movement and travelling. It has come in evidence that she use to drive before the accident which she now cannot continue to do due to amputation of the leg.

Manmohan Kaur, the claimant when examined has stated that the artificial limb is required to be changed after every five years. This Court also notices that with the growing age, her movement would become difficult. She would be required to be dependent on someone throughout her life. Hence, she would be required to keep a permanent help.

Learned counsel for the Insurance Company, submitted that once the amount has been awarded for the artificial limb, the amount awarded for disability has to be reduced. She submitted that with the artificial limb, disability is bound to decrease.

This Court has considered the submissions. However, unable to

agree. Artificial limb cannot take place of original/natural. Artificial limb is only to reduce the dependency. No doubt with the technological advancement, quality of artificial limb has improved but these advanced artificial limb do come at a substantive cost.

In such a situation, the Court has to see what is the functional disability, it would always depend upon the nature of work, one is capable of carrying. In the present case, she was working as an Insurance Agent (Advisor) as well as imparting education to the students by doing tuition work. It has come in evidence that after the date of accident, she is not able to continue with the aforesaid work. Even a notice has been placed on file to prove that Income Tax Authorities had issued her notice for not filing the return.

Keeping in view the aforesaid facts, this Court is of the considered view that in the present case, the trial Court has rightly considered the functional disability to the extent of 75%,

Accordingly, the compensation payable in case of Manmohan Kaur, is re-worked as under:-

Heads	Awarded by the Hon'ble High Court	Awarded by the Motor Accident Claims Tribunal
Medical Expenditure	₹48,559/-	₹48,559/-
Medical Bills (-) Reimbursed from ICICI Prudential Life Insurance Company Ltd.	₹11,92,050/- (-) ₹4,56,763/- = ₹7,35,287/-	₹11,92,050/-
Artificial Limb	₹3,25,700/-	₹3,25,700/-

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Permanent disability	₹39,546 (Income assessed) x 75% x 12 x 14 = ₹49,82,712/-	₹39,546 (Income assessed) x 75% x 12 x 14 = ₹49,82,712/-
Attendant Charges	₹99,000/-	₹99,000/-
Transportation Charges	₹2,72,784/-	₹2,72,784/-
Pain and Sufferings	₹50,000/-	₹50,000/-
Loss of amenities	₹50,000/-	₹50,000/-
Special Diet	₹15,000/-	₹15,000/-
Artificial Limb (for future) (change after every 5 years)	₹15,00,000/-	NIL
Total	₹80,79,042/-	₹70,35,805/-
(+) expenses incurred on purchase of the mediclaim policy	₹10,000/-	NIL
Total Compensation	₹80,89,042/-	₹70,35,805/-

The compensation payable in case of Amanjot Kaur, is re-worked as under:-

Heads	Awarded by the Hon'ble High Court	Awarded by the Motor Accident Claims Tribunal
Medicines	₹8575/-	₹8575/-
Hospital charges including implant (-) Reimbursed from ICICI Prudential Life Insurance Company Ltd.	₹44,547/- - ₹43,237/- = ₹1310/-	₹44,547/-
Attendant Charges	₹5,000/-	₹5,000/-
Special diet	₹5,000/-	₹5,000/-
Transportation	₹5,000/-	₹5,000/-
Pain & Suffering	₹10,000/-	₹10,000/-
Total Compensation	₹34,885/-	₹78,122/-

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(+) expenses incurred on purchase of the mediclaim policy	₹5,000/-	NIL
Total Compensation	₹39,885/-	₹78,122/-

Compensation awarded to Harminder Singh Rosha for the damage of car	
Heads	Compensation awarded by the Hon'ble High Court
Compensation awarded by Motor Accident Claims Tribunal	₹1,85,751/-
(-) Expenses borne by the Insurance Company	₹1,05,634/-
	₹80,117/-
(+) Expenses incurred for purchase of the policy	₹10,000/-
Compensation awarded by the Hon'ble High Court	₹90,117/-

Two appeals by Insurance Company in case of FAO No.4755 of 2016 and FAO No.5758 of 2016 are allowed and appeal in FAO No.4759 of 2016 is dismissed. Appeal by claimants in case of FAO No.3590 of 2016 is allowed and compensation is enhanced by ₹10,53,237/- which shall be payable alongwith interest at the rate of 7.5% p.a. from the date of claim petition till the realization of the amount.

All the appeals are accordingly, disposed of.

17.08.2018
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No