

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 1655 of 2017 (O&M)

Date of decision : 19-11-2019

\* \* \* \* \*

Royal Sundram General Insurance Company Limited

.....Appellant

Versus

Meenakshi Mann and another

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. Rajbir Singh, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for the respondents.

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**RITU BAHRI, J.**

The appellant-Royal Sundram General Insurance Company Limited (hereinafter referred to as 'the Insurance Company') has come up in appeal against the award of Motor Accidents Claims Tribunal, Chandigarh dated 29.11.2016 passed in claim petition filed by respondent No. 1-claimant (hereinafter referred to as 'the claimant') on account of injuries suffered by her in the accident. By way of this award, the claimant has been awarded a compensation of Rs. 15,19,857/- on account of suffering 25% permanent disability as per disability certificate Ex. P-20 in a road accident which took place on 25/05/2014.

Through this appeal, the insurance company has challenged the

compensation awarded to the claimant on two grounds. Counsel for the Insurance Company submits that first ground, on the basis of which, the award has been challenged is that earlier the claimant was teaching senior classes i.e 9<sup>th</sup> and 10<sup>th</sup> classes and her salary was Rs.28,500/- per month. Subsequently, after the accident, she was appointed to teach junior/middle classes and her salary was reduced to Rs.28,500/- to Rs.25,000/- per month. The grievance of the counsel for the Insurance Company is that the difference of the salary was only approximately Rs.3000/- per month and hence, with respect to loss of salary, the compensation awarded was on the higher side. The second ground, on the basis of which, the Insurance Company has challenged the award is the compensation granted by the Tribunal towards medical expenses. Because, medical expenses totalling Rs. 97,847/- as per the medical slips proved on record (Ex. P6 and Ex. P7) were paid by the insurance company with whom she was medically insured. Thus, counsel for the Insurance Company submits that the compensation granted towards medical expenses is without any basis and on higher side.

Briefly stated, the facts of the case are that on 25/05/2014, at about 5 PM, claimant Mrs Minakshi Mann was going from her house in Sector 47 Chandigarh to Sector 35 Chandigarh while sitting on the pillion seat of the motorcycle which was being driven by her husband Mandeep Singh at a slow speed and on the left side of the road. When they crossed dispensary of Sector 34 Chandigarh and were going in the direction of All India Radio Station Sector 34 Chandigarh and reached near the turn, at that time, a car bearing registration No. HP-12-A-0786 came at fast speed being driven in a rash and negligent manner by Mohammed Ashiq (respondent No. 1 in the claim petition) and took a sudden right turn and struck against

the rear side of the motorcycle. As a result of this accident, the claimant and her husband fell on the road along with the motorcycle and claimant received multiple injuries. In the background of this accident, a criminal case was registered against Mohammed Ashiq-respondent No. 1, on the basis of the statement of Mandeep Singh. Due to the injuries suffered by the claimant in the accident, claim petition was filed by the injured claimant under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation. Upon notice, the respondents appeared and contested the claim petition. On the basis of the arguments addressed and evidence produced by the parties, the tribunal held that the accident had occurred due to rash and negligent driving of car No. HP-12-A-0786 by Mohammed Ashiq respondent No. 1.

Total loss of income of the claimant was assessed in the manner that as per income tax return Ex. P-12, the gross salary of claimant after deduction was Rs.2,86,000/- per annum approximately and her monthly salary was Rs.23,830/- approximately. Therefore the loss of income for the period for which she did not remain in job came to be at the rate of Rs. 23,830/- per month from the month of June 2014 to rejoining of job on 27/10/2014 that is for a period of 5 months. Therefore, total loss of income came to Rs. 23,830 x 5= Rs. 1,19,150/-. In evidence, it was established that claimant suffered permanent disability to the extent of 25%, so future loss of income is to the extent of 25% throughout life for which multiplier is of 14. It is proved on record that at the time of accident she was getting salary of Rs. 26,850/-. Although she rejoined job, however, at lower salary, therefore, it came out to be Rs. 23,830/-x 25/100 x 12 x 14= Rs. 10,00,944/-. The compensation was assessed as per the ratio of law settled

by this Court in cases titled ***Oriental insurance company limited versus Ajaib Singh and others (FAO No. 410 of 1989)*** and ***Kulwinder Singh versus Sh.Parkash Chand and others (FAO No. 5056 of 2005)***. In the above said judgments, it has been held that even if a claimant has rejoined services, the loss of income suffered by the claimant on account of permanent disability has to be assessed keeping in view the salary received by the claimant. Keeping in view the above said judgments, the compensation on this ground cannot be interfered with.

As regards the medical expenses, she proved medical slips as Ex.P-6 and Ex.P-7 showing that total expenses were Rs.97,847/- which was paid by the Insurance Company as she was medically insured. However, as per a law settled by this Court on this point, it was held that this medi claim policy cannot be adjusted in this compensation and claimant was held entitled for whole of the amount under the head of medical expenses of Rs.97,847/- spent by her.

On the second ground, counsel for the Insurance Company has referred to a judgment passed by a Coordinate Bench of this Court in ***Vishal versus Bugga Singh and others 2016 (3) PLR 51***, wherein, it was held that the claimant was not entitled to claim reimbursement under same head from insurer of offending vehicle when amount has already been recovered under the medical claim policy. In this judgment, reference was made to ***Iffco Tokio General Insurance Company Limited Versus Shambhu Pathak and Others, 2013 (1) TAC 313***, wherein the Delhi High Court held that claimant would not be entitled to claim the reimbursement under the same head from insurer of offending vehicle when an amount under the medi-claim policy had been recovered. The same proposition was also held by the Madhya

Pradesh High Court in ***Jitendra Singh Jain versus Rahul Singh Parihar and Others, 2008 (5) MPHT 336.***

Counsel for the respondent has referred to a judgment passed by this Court in **FAO No. 6747 of 2016 (O&M)** titled, '***New India Assurance Company Ltd. vs. Ishabbir Singh and others***'. In this case, the appeal filed by New India Assurance Company Limited was dismissed by this court vide order dated 23/12/2016 and this court had considered the aspect regarding *as to whether life insurance money of the deceased is to be deducted from the claimant's compensation under Motor Vehicles Act 1939.* While dismissing the above said judgment, reference was made to a judgment of Hon'ble the Supreme Court of India in the case of ***Helen C. Rebello versus Maharashtra State Road Transport Corporation, 1998 AIR (SC) 3191.*** Hon'ble the Supreme Court held in this case that compensation under Motor Vehicles Act is statutory, while it is contractual under life insurance policy. There is no correlation between two amounts even remotely. The amount receivable under Motor Vehicles Act is on account of injury or death without making a contribution. Insured contributes his own money in life insurance policy. Amount received by claimant on life insurance of deceased is not deductible from compensation under Motor Vehicles Act 1939. In paragraph 30 of the judgment, Hon'ble the Supreme Court observed as under:-

*30. 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 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., same accident. It is significant to record here in both the sources, viz., either under the [Motor Vehicles Act](#) or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the 'pecuniary gain' only on account of one's accidental death. This, of course, is pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the [Motor Vehicle Act](#). There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law.*

As per the aforementioned judgment of Hon'ble the Supreme Court, a person contributes his own salary towards life insurance policies and this payment is received finally when the policy matures. It has no concern with the motor accident claim. Compensation has to be assessed separately under the motor vehicles act. Reference was also made to another judgment of this Court in ***Manoj Kumar Yadav versus Azad and others 2015 (3) PLR 211***, wherein it was held that even if the amount was directly paid by the insurance company to the hospital under medical policy, which was obtained by father of the claimant by way of payment of separate premium, the said amount cannot be deducted from the claim awarded under Motor Vehicles Act. Hence, after going through the judgments in the cases of ***Ishabbir Singh's case (supra)*** and judgment of Hon'ble the Supreme Court in ***Helen C Rebello (supra)***, no interference is required in the finding given by the Tribunal with respect to the compensation under the head of medical expenses despite the fact that the medical bills had been reimbursed as per medi claim policy.

In view of all that has been discussed above, present appeal is hereby dismissed.

**19.11.2019***ritu***( RITU BAHRI )  
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No