

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

F.M.A.T 121 of 2018
With
CAN 1 of 2018
(Old CAN 5393 of 2018)
(Via Video Conference)
Ratna Dey
– Versus –
Bajaj Allianz General Insurance Co. Ltd. & Anr.

For the Appellant/Claimant : Mr. Ashique Mondal, Adv.

For the Respondent/Insurance Company : Mr. Rajesh Singh, Adv.

Heard on : 16.08.2021

Judgment on : 16.08.2021

Shekhar B. Saraf, J.:

1. The instant appeal is directed against the judgment and order dated 18th September 2017 passed by the Learned Additional District Judge – cum MAC Tribunal, 12th Court, Alipore, South 24 Parganas, in M.A.C. Case No. 10/2016 (hereinafter referred to as ‘the Tribunal’) wherein the claimant has been granted a total compensation amounting to Rs. 4,43,240. The compensation amount has been decided by the court after deducting medical reimbursement of expenses incurred by the claimant because the

medical reimbursement had already been received by the husband of the claimant and the claimant had concealed the said fact before the court. Thus, according to the Tribunal below, double-benefit could not be given to the claimant.

FACTS:

2. The claim has arisen out of a road traffic accident, which took place on 26.02.2011 at Ruby Golpark bus stop under P.S. Kasba. According to the petitioner, on the date of accident while getting down from the offending bus at Ruby Golpark Bus stop, the driver of the bus suddenly drove the bus at a very high speed without any caution and as a result of which the claimant fell down from the bus and the rear wheel of the bus ran over her pelvis resulting in severe injuries to the claimant. The claimant sustained multiple injuries all over her body including fracture of pelvis and compound femoral shaft fracture. As a result of several operations for fixation of pelvis the claimant incurred Rs. 22,00,000/- on her treatment. Due to the accident, she lost her reproductive capacity and her conjugal life was devastated. The facts relating to the accident and liability of the respondent No. 1 insurance company as fixed by the Tribunal are not in dispute. The claim has been filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') and compensation is being sought thereunder.

ARGUMENTS:

3. It is submitted on behalf of the appellant that the monthly income of Rs. 3,000/- of the victim considered by the Learned Judge, was inadequate. Non granting of future prospects, erroneous assessment of percentage of disability, non-reimbursement of medical expenses and quantum of non-pecuniary damages allowed, have also been taken up by the claimant in this appeal. Accordingly, it was argued that a lesser quantum of compensation has been wrongfully awarded by the Tribunal. The claimant further argues that the Tribunal has erred by not fully reimbursing medical expenses of Rs. 21,75,583/-. It is submitted that the bills for medical expenses have been exhibited and are undisputed.
4. Per contra, the Learned Advocate for the insurance company submits that the award passed by the Tribunal is just and there is no scope of any further enhancement of the award. It is further submitted by the insurance company that the said reimbursed medical expenses have been paid by the employer of the appellant's husband and the same has been proved by way of replies received under "The Right to Information Act, 2005" and related documents which were exhibited as Exhibit Q, R, S, and T. Finally, the Learned Advocate for the appellant/ claimant argues that the amount ought to have been reimbursed in view of the judgment passed by this Hon'ble Court, in ***The New India Assurance Co. Ltd. -v- Bimal Kumar Shah*** reported in ***2019 ACJ 1532***.

ANALYSIS WITH ORDER

5. I have heard the arguments made by the counsels for both the parties.

The issue that requires consideration of this court is regarding double-benefit arising out of medical reimbursement received by the claimant's husband from the Mizoram Government. It has been decided by the judgement of the Hon'ble Supreme Court in ***Helen C. Rebello -v- Maharashtra State Road Transport Corporation and Another*** reported in ***1999 ACJ 10 (SC)*** that 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. Relevant paragraph of the judgement is mentioned below:

“35. 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”.

“36. 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 a 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"

"37. 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."

6. In the judgement passed by this Hon'ble court and relied on by the claimants, **Bimal Kumar Shah & Anr. (Supra)** the Division Bench considered a catena of Supreme Court and High Court judgments to conclude that an insurance company despite receiving premiums from the insured to indemnify him cannot be allowed to achieve gains merely because the victim of the accident has received some money out of faithful discharge of contractual liability by another insurance company. Relevant paragraphs of the judgement are delineated below:

“26. The Mediclaim policy bought by the victim from an insurer led to an insurance contract between the two and both bound themselves by the terms and conditions of such policy. The same envisaged an assured amount in favour of the victim upon a contingency of the nature covered by the policy happening, and thereby to indemnify the victim. The liability under the policy was purely contractual. It is common knowledge that unless premiums either monthly, bi-monthly, quarterly, half-yearly, annually or even one-time, as the case may be are paid by the insured, the insurer would not in the first place settle his claim and indemnify the insured. Premiums must have been paid, resulting in the insurer settling the claim of the victim. The liability under the insurance contract, upon the accident happening, was discharged by the insurer. The contract between the parties, thus, worked itself out. It is this amount of money, i.e., Rs. 1,50,000/-, which the insurer paid to the victim that has triggered the appellant insurance company to urge this Court to deduct such amount from the compensation awarded by the tribunal.

27. On the flip side, there is an insurance policy that was bought by the owner of the offending motor vehicle from the appellant insurance company in terms whereof the appellant insurance company agreed to indemnify the owner of any liability arising out of an accident involving the use of his insured motor vehicle. This was obviously a statutory liability.

28. The argument of Mr. Singh was that compensation that is determined under Section 168 of the Act of 1988 should not be a bonanza for the victim and care must be exercised to ensure that the victim does not receive ‘double benefit’. True it is, the tribunals/high courts should guard against determination of just compensation which would amount to a bonanza for an accident victim or his family. But, at the same time, is it not the duty of the tribunals/high courts to determine just compensation in a manner that an insurance company, which is under a statutory liability to pay, does not escape the rigours of paying compensation and thus evade its obligation under the contract of insurance that exists between it and the owner of the offending vehicle? Should such an insurance company despite receiving premiums from the

insured to indemnify him be allowed to achieve gains merely because the victim of the accident has received some money out of faithful discharge of contractual liability by another insurance company? The answers to the aforesaid questions cannot be in favour of the insurance company which is under a statutory liability to pay. One should not forget that what the victim gets from his Mediclaim policy is the return for making payment of premiums. It is the hard-earned money that he puts in, in insurance business as premium, that is returned to him upon happening of an accident. The money received, thus, does not come free. In most cases, the accident and its aftermath are not only heart breaking for the victim but may also result in severe physical disability to him. To lead a paralysed life, is sometimes more painful than death itself. Such an accident victim may ask "why me"? The return that he receives from his insurer on the claim arising out of Mediclaim policy is consolation money, in the circumstances. To consider such return as a benefit received from other sources while determining compensation, to my mind, would be an approach of a narrow-mind, not intended in the best interests of the victim who might be left high and dry, battling for the rest of his life to survive only on the compensation money. I hold that any money received by an accident victim as return for money invested by him ought not to be comprehended as a benefit received and, therefore, question of the victim in this case being doubly benefitted does not and cannot arise.

Emphasis Supplied

7. Finally, in a recent judgement delivered by the Hon'ble Bombay High Court, the issue of double-benefit has been decided in a similar manner. It was held by the court that the nature of the proceedings under the Act is of relevance and a claim petition for compensation in regard to motor accident filed by the injured is neither a suit nor an adversarial lis in the traditional sense. Thus, the benefits emanating from an independent and unconnected contract of insurance cannot be considered by the Tribunal

as it besets with variables rooted in contract. The relevant paragraph of **Royal Sundaram Alliance Insurance Co. Ltd. -v- Ajit Chandrakant Rakvi and Ors.** reported in **2020 ACJ 691** is extracted below:

“28. In the light of aforesaid enunciation as regards the statutory liability of the insurer, the nature of general contract of medical insurance needs to be noted. The medical insurance covers a variety of ailments and medical expenses therefor, which are not otherwise specifically excluded. Often there is an upper limit. The duration is also stipulated by the terms of the contract. In this backdrop, the matter can be looked at from another angle. If the claimant exhausts the upper limit or substantial part of the insured amount, for meeting the expenses of treatment, for the injury which is suffered in an accident, the claimant would not be entitled to the benefit of the medical insurance, if the occasion again arises on account of certain other ailments unconnected with the accident. If the policy is in the nature of Family Floater Plan and the limit is exhausted for meeting the expenses in connection with an injury suffered in an accident, by one member, the other members of the family cannot have the benefit of the medical insurance.

29. In the backdrop of these variables, the nature of the proceedings under the Act, becomes significant. A claim petition for compensation in regard to a motor accident filed by the injured before Tribunal constituted under Section 165 of the Act, is neither a suit nor an adversarial lis in the traditional sense. Though the tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. (United India Insurance Co. Ltd. Vs. Shila Datta & Ors. MANU/SC/1256/2011MANU/SC/1256/2011: (2011) 10 SCC 509). This being the nature of the proceedings before the Tribunal, even in respect of the parties before it, in my view, the benefits emanating from an independent and unconnected contract of insurance cannot be considered by the Tribunal, as it besets with variables rooted in contract.

30. From this stand point, in the context of the distinction between the contractual liability under the contract of insurance (medical) and the

statutory liability under the Act, the aforesaid proposition, not to deduct the amount of reimbursement received, under a Mediclaim policy, appears to be in consonance with the principle of beneficial interpretation and advances the object of the Act. Hence, I am not persuaded to agree with the submission on behalf of the appellant that the said amount of Rs. 1,20,000/- ought to have been deducted.”

8. From the above discussion it flows that the liability of an insurer providing insurance through mediclaim to the victim for medical expenses incurred by him due to an accident or hospitalization, subject to a limit and based on the premiums paid by the victim by a contract, is distinct from and independent of the liability imposed on the respondent insurance company as the insurer of the offending vehicle and its owner from third party risks in case of accident and is specifically provided for and imposed by the Act. It is not contractual as far as the victim is concerned.

9. The judgments referred to by the Division Bench of the Calcutta High Court in ***Bimal Kumar Shah (Supra)*** primarily relate to cases where mediclaim had been obtained by the victim. Furthermore, the Supreme Court in ***Helen C. Rebello (Supra)*** also looked at a similar factual situation. **The jury is out with regard to the issue as to whether a deduction is to be made for amounts received by the victim wherein the victim has not herself contributed to payment of premiums.** In the present case, the victim has received compensation from the husband's employer by virtue of the service being provided by the husband to his employer. The germane issue now is whether for such a

reimbursement/compensation the amount received may be deducted while determining the compensation of the victim under the Act. In my view, while interpreting a beneficial legislation such as the one we are dealing in presently, one is to focus on the purpose behind the legislation. On a perusal of the provisions of the Act, it is crystal clear that the legislation immanently provides for compensation to the victim keeping in mind all facets, such as, age of the victim, future income prospects of the victim, disability caused to the victim, medical expenses incurred by the victim, non pecuniary damages caused to the victim and so forth. All the above factors are required to be taken into account while determining the compensation payable to the victim. The sophistry of the arguments in relation to double-benefit that a victim would receive if he or she was reimbursed for medical expenses from another source that is not statutory in nature is negated by the fact that the compensation payable under the Act is statutory in nature and not fettered in any other manner. In case the victim was to be compensated by virtue of two statutes for the same incidents, the picture would be different. Section 167 of the Act takes care of this contingency wherein the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee. The above contingency is because of the reason that the victim is liable to be paid by the employer under the Workmen's Compensation Act, 1923. In my view, unless the victim is compensated by virtue of another statute, the question of deduction of any reimbursement of the medical expenses cannot and does not arise while calculating the compensation payable to a victim under the Act.

10. In a similar factual matrix, the Bombay High Court in ***United India Insurance Co. Ltd. -v- Anjana W/o. Nileshkumar Parmar & Anr.*** reported in ***2012(3) Mh.L.J. 914*** decided a question that arose before the Learned Single Judge as to whether an amount of Rs. 5,00,000/- paid under the group hospitalisation policy by the employer of the husband of the applicant should be deducted from the total amount of compensation awarded under the Act. The High Court placed reliance upon another Bombay High Court judgment passed in ***Vrajesh Navnitlal Desai -v- K. Bagyam & Ors.*** reported in ***2006 ACH 65 (BOM)*** and held that the amount received as reimbursement under the group hospitalisation policy was not deductible from the compensation payable under the Act.

11. In the present case, the reimbursement given to the claimant's husband on account of injuries caused to his wife is under a different contract between the employer and the employee (claimant's husband). The benefit of such pecuniary payment could not be given to the insurance company as the same arises out of contractual right of the claimant. There is a clear distinction between the right to claim compensation via statute and the right to compensation via contract. The mere fact that a benefit has been conferred upon the claimant through different insurance contracts for which payment has been by the claimant then the same is not liable to be set-off because the statutory liability arising from the act is absolute and it must be discharged if no contributory negligence has been proved on part of the victim. Therefore, from the analysis of judgements

mentioned above, I am of the view that there is no scope for deduction of the amount received by the claimant (through her husband's employer) from the compensation determinable under the Act.

12. I would like to summarise the conclusions arrived at hereinabove after considering the various precedents placed before me and the ultimate ratio decidendi arrived at by this Court:

- a. The liability of an insurer providing insurance through Mediclaim to the victim for the medical expenses is *distinct from and independent of the liability imposed* on an insurance company liable to pay compensation under Section 166 of the Motor Vehicles Act, 1988.
- b. Double benefit argument that a victim would receive if he or she was reimbursed for medical expenses from another source that is not statutory is negated by the fact that the ***compensation payable under the Act is statutory in nature*** and not fettered in any other manner.
- c. There is a distinction between the right to claim compensation via statute and the right to compensation via contract. The *statutory liability arising from the Act is absolute and it must be discharged* if no contributory negligence has been proved on part of the victim.
- d. Ergo, unless the victim is compensated by virtue of another statute, the question of deduction of any reimbursement of the medical expenses cannot and does not arise while calculating the compensation payable to a victim under the Act. The Act has

specifically provided for such remedy to the insurance company under Section 167.

13. For calculating damages, this court has followed the Hon'ble Supreme Court's order passed in **Smt. Sarla Verma & Ors. -v- Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** and **National Insurance Company Ltd. -v- Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680**. After following the precedence of this Court on the point of monthly income, I find substance in the arguments of the appellant. For the year 2011, in a claim under section 166 of the Act, an amount of Rs.4,000/- per month does not appear to be exorbitant.
14. On the issue of disability, I find that Ld. Tribunal has negated the 70% disability assessed by a private doctor and decided it to be of 27 percent only. However, considering the nature and severity of injury, I assess it to be 40% disability. Learned Advocates for the claimant and insurance company have not opposed the above assessment and have consented to the same.
15. The claimant would also be entitled for 40% future prospect on her income in view of the principles of assessment already settled by the Hon'ble Supreme Court. Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter:-

Particulars	Amount (Rs.)
Monthly Income	4,000/-
Annual Income (x 12)	48,000/-
Add 40% future prospects (19,200/-)	67,200/-
Multiplier (17)	11,42,400/-
Disability 40 %	4,56,960/-
Medical expenses	21,75,583/-
Non-pecuniary damages -	2,00,000/-
Total Principal Compensation	28,32,543/-
LESS – award of Tribunal and paid by insurer	<u>4,43,240/-</u>
BALANCE (enhancement)	<u>23,89,303/-</u>

16. The claimant acknowledges receipt of the awarded amount of Rs.4,43,240/- in terms of the direction of the tribunal. Accordingly, the balance enhanced sum of Rs. 23,89,303/- would become payable to the appellant by the insurance company, together with interest assessed at the rate of 6 per cent per annum on and from the date of filing of the claim petition till payment, within a period of 45 days from the date of receipt of the bank account particulars of the appellants. The payment shall be made by the insurance company by way of NEFT/ RTGS in the bank account of the appellant/ claimant directly. As the offending vehicle did not have the valid permit, the Tribunal Judge has already granted liberty to the insurer to recover the total compensation from the owner of the vehicle. Such observation of Tribunal is not interfered with.

17. With the aforesaid directions, the instant appeal bearing F.M.A.T. 121 of 2018 shall stand disposed of. In view of the disposal of this appeal, connected applications, if any, are also disposed of. The concerned Department is directed to tag the applications, if any, with the main appeal.
18. There will be no order as to costs.
19. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities on priority basis.
20. I would go amiss if I do not acknowledge the superlative assistance provided by the learned counsels for both sides, Mr. Rajesh Singh and Mr. Ashique Mondal, in adjudicating the present matter.

(Shekhar B. Saraf, J.)