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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1767 of 2020 & 35 of 2021
and C.M.P.No.12969 of 2020

C.M.A.No.1767 of 2020

1.New India Assurance Co. Ltd.,
having its branch office at,
81/3, 1st Floor, Raja Indane Gas Building,
Ingoor Road, Mugasipidariyur,
Chennimalai, Perundurai Taluk,
Erode 638 051.

2.New India Assurance Co. Ltd.,
Divisional Office, 1st Floor,
Amman Complex,
No.1360, EVN Road,
Erode 638 011.

.. Appellants/3rd & 4th Respondent

Vs.

1.R.Ramesh

2.K.Loganathan

.. Respondents/1,2 Respondents

3.R.Gunasekaran

.. 3rd Respondent/ Petitioner

C.M.A.No.35 of 2021

R.Gunasekaran

.. Appellant/ Petitioner

Vs.

1.R.Ramesh

2.K.Loganathan

3.New India Assurance Co. Ltd.,
having its branch office at,
81/3, 1st Floor, Raja Indane Gas Building,
Ingoor Road, Mugasipidariyur,
Chennimalai, Perundurai Taluk,
Erode 638 051.



4.New India Assurance Co. Ltd.,
Divisional Office, 1st Floor,
Amman Complex,
No.1360, EVN Road,
Erode 638 011.

.. Respondents/ Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 19.02.2020, made in M.C.O.P. No.192 of 2018, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode.

(In C.M.A.No.1767/2020)

For Appellants : M/s.S.R.Sumathy

For Respondents : Mr.R.Nalliyappan (for R3)

(In C.M.A.No.35/2021)

For Appellant : Mr.R.Nalliyappan

For Respondents : M/s.S.R.Sumathy (For R3 & R4)

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

C.M.A. No.35 of 2021 is filed for enhancement of the compensation and C.M.A. No.1767 of 2020 is filed to set aside the award dated 19.02.2020, made in M.C.O.P. No.192 of 2018, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimant filed M.C.O.P. No.192 of 2018, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.01.2018.

5.According to the claimant, on the date of accident, when he was riding his Motorcycle bearing Registration No.TN-36-AS-0670 on Perumanallur to Perundurai N.H.544 bye-pass road from West to East direction at left side of the road, while proceeding near Vijayamangalam Vaipadi Pirivu, the 1st respondent



drove the Eicher Van bearing Registration No.TN-23-3432 belonging to the 2nd respondent from South to North direction in a rash and negligent manner and dashed against the Motorcycle rode by the claimant and caused the accident. In the accident, the claimant sustained multiple fractures and grievous injuries all over the body. The accident occurred only due to rash and negligent driving by the driver of the Eicher Van belonging to the 2nd respondent and hence, the claimant filed the claim petition, claiming compensation against the respondents as driver, owner and insurer of the said vehicle respectively.

6.The respondents 1 and 2 remained exparte before the Tribunal.

7.The 4th respondent-Insurance Company filed counter statement and denied all the averments made by the claimant in the claim petition, which was also adopted by the 3rd respondent-Insurance Company. According to the 4th respondent, the accident occurred when the 1st respondent who was driving the Eicher Van slowly and cautiously observing all the traffic rules on the South to North road, from Vaipadi and entering into Vijayamangalam road, the claimant who was riding the Motorcycle without reducing the uncontrollable speed, failed to notice the Eicher Van and dashed the Motorcycle on the left side of the Van and invited the accident, without giving any opportunity to the 1st respondent to avert the collision. The accident occurred solely due to rash and negligent riding of Motorcycle by the claimant, without wearing helmet. Hence, maximum percentage of liability may be fastened upon the claimant and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimant examined himself as P.W.1, examined Dr.Kesavamoorthy as P.W.2 and marked 21 documents as Exs.P1 to P21. The respondents did not let in any oral and documentary evidence. The disability certificate issued by the Medical Board was marked as Ex.C1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, driver of the Eicher Van belonging to the 2nd respondent and directed the respondents 3 and 4 as insurer of the said vehicle to pay a sum of Rs.6,06,000/- as compensation to the claimant.

10.To set aside the said award dated 19.02.2020, made in M.C.O.P. No.192 of 2018, the respondents 3 and 4 - Insurance Companies filed C.M.A. No.1767 of 2020 and not being satisfied with the amounts awarded by the Tribunal, the claimant has filed C.M.A.No.35 of 2021, for enhancement of compensation.



11.The learned counsel appearing for the claimant contended that the claimant suffered fracture of right leg knee and ankle and disability. He was referred to the Medical Board and the Medical Board assessed that the claimant suffered 60% disability. At the time of accident, he was working as a Medical Representative and was earning a sum of Rs.42,000/- per month. Due to the injuries and disability suffered, he could not discharge his duties as he was doing earlier. The Tribunal ought to have granted compensation by adopting multiplier method. The amounts granted by the Tribunal under different heads are meagre. The Tribunal failed to grant compensation for loss of income and loss of marital prospects and prayed for dismissal of C.M.A.No.1767 of 2020 filed by the respondents 3 and 4-Insurance Companies and for enhancement of the compensation.

12.Per contra, the learned counsel appearing for the respondents 3 and 4 contended that claimant admitted that he is continuing his work and there is no loss of income. The Tribunal considering the disability certificate produced by the claimant, granted compensation by adopting percentage method. There is no loss of earning capacity. In view of the same, the claimant is not entitled to compensation by adopting multiplier method. The claimant has not made out any case for enhancement of the compensation. The learned counsel appearing for the respondents 3 and 4 further contended that though the compensation granted by the Tribunal is excessive, the respondents 3 and 4 restrict their appeal with regard to grant of compensation towards medical expenses and contended that claimant availed the reimbursement of a sum of Rs.1,90,370/- through Mediclaim policy. The Tribunal ought to have deducted the said sum of Rs.1,90,370/- while granting compensation towards medical expenses and relied on the judgment of the Division Bench of this Court dated 06.10.2015 made in C.M.A.No.2232 of 2015 [Royal Sundaram Alliance Insurance Co. Ltd., Vs. M.Satya Rao and another] and prayed for setting aside the award of the Tribunal and dismissing C.M.A.No.35 of 2021 filed by the claimant for enhancement.

13.Heard the learned counsel appearing for the claimant as well as the respondents 3 and 4 - Insurance Companies and perused the materials available on record.

14.It is the case of the claimant that he suffered injuries and has taken treatment as inpatient at KMCH, Coimbatore in two different spells viz., from 16.04.2018 to 19.04.2018 and from 08.05.2018 to 16.05.2018 and he underwent surgery. He was referred to the Medical Board. The Medical Board examined the claimant and certified that he suffered 60% disability. The claimant examined the Doctor who treated him as P.W.2, to prove



the injuries and disability suffered by him. The Tribunal considering the evidence of claimant as P.W.1, evidence of Doctor as P.W.2 and admission of claimant that he is continuing his work and there is no loss of income or loss of earning capacity, awarded compensation by adopting percentage method. In view of no loss of earning power, the claimant is not entitled to compensation by adopting multiplier method and the percentage method adopted by the Tribunal is in order. The Tribunal awarded a sum of Rs.1,80,000/- towards disability at the rate of Rs.3,000/- per percentage for 60% disability. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2018. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.3,00,000/- [Rs.5,000/- x 60%], at the rate of Rs.5,000/- per percentage for 60% disability. Considering the nature of injuries and treatment taken, the meagre amounts granted by the Tribunal towards attendant charges and extra nourishment are enhanced to Rs.20,000/- each. The Tribunal has not granted any amount for loss of amenities. For the injuries sustained in the accident, the claimant would have suffered inconvenience. Hence, a sum of Rs.30,000/- is awarded towards loss of amenities.

15.It is the case of the respondents 3 and 4 in the appeal that the claimant got reimbursement of Rs.1,90,370/- under the Mediclaim policy and the Tribunal failed to deduct the same from the compensation awarded towards medical expenses. From the award of the Tribunal it is seen that the claimant has admitted that he availed reimbursement of Rs.1,90,370/- from the Star Health Insurance. As per the judgment of the Division Bench of the Kerala High Court reported in 2016 ACJ 807 [National Insurance Co. Ltd., Vs. Akber Badsha and others], the claimant is not entitled to the said sum of Rs.1,90,370/-, under the head, medical expenses, which has been reimbursed by the Star Health Insurance. The Division Bench of the Kerala High Court, after considering the judgments on this issue in paragraph nos.12, 15 and 17, held as follows:

"12. These aspects were infact considered by a Division Bench of the Karnataka High Court pursuant to the reference made, doubting the decision rendered by a Single Bench of the Karnataka High Court in Shaheed Ahmed v. Sankaranarayana Bhat (ILR 2008 Karnataka 3277). It was accordingly held by the Bench in the New India Assurance Company Limited v. Manish



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Gupta [2013 (1) Karnataka Law Journal 624] explaining the significant difference in between and observing that the very concept of insurance is not to extend any unlawful enrichment to anybody in respect of the very same cause of action. The purpose of insurance is only to place the party to the same level from where he suffered the downfall because of the contingency occurred. The observations made by the Division Bench of the Karnataka High Court in paragraphs 18, 19, 20 and 22 are in the following terms:

18. The tests to be applied for determining "the 'pecuniary advantage' which has to be deducted from the amount of compensation in a case of death are:

(1) Onus is on the insurer to establish that some pecuniary benefit or reasonable expectation of pecuniary benefit to the claimants, is resulting from the death of the deceased.

(2) Damages to be awarded to the claimants are compensatory and not punitive. Therefore, the test that no advantage should accrue to the wrong doer would not be applicable.

(3) Where death has merely accelerated the receipt of benefits, which the claimants would have in any case, received at some future date in such cases pecuniary benefits come to the claimants not by reason of the death. The pecuniary advantage received by the claimants is the advantage gained by acceleration of their interest.

(4) Benefits received from the employer in some cases may be held to come to the claimants by reason of death. But, if the benefits are shown to have been received merely out of consideration for these claimants, e.g., contributions by co-workers to relieve the needs of the claimants, then such benefits cannot be held to have been received merely by reason of death of the deceased.

(5) Lastly, if there is any doubt as to whether the balancing principle extends to any class of benefit not covered by



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any binding authority, the doubt has to be resolved in favour of the claimants inasmuch as in such a case the defendant must be held to have failed to discharge the burden placed on him to justify such deduction.

19. With reference to the deductions under the Mediclaim, a Division Bench of the Madhya Pradesh High Court in the case of Madhya Pradesh State Road Transport

Corporation v. Priyank reported in 2000 ACJ 701, placing reliance on the full Bench decision has observed that the amount received by the insured under the Mediclaim Policy is not deductible inasmuch as the claimant has received these amount under the contract of insurance, for which had paid premium. We are unable to persuade ourselves agree to the opinion rendered by the Division Bench of the Madhya Pradesh High Court, moreso having regard to the fact that the Full Bench had ruled and classified as to what are the amounts, which are deductible and the amounts which are not deductible.

20. Indeed an injured person cannot claim benefit out of his own misfortune. He cannot claim medical expenses under the Mediclaim policy and also claim damages in the nature of amount expended for medical treatment under the claim petition, which is filed under the Motor Vehicles Act. In similar, if not identical circumstances, a Division Bench of this court in the case of Karnataka State Road Transport Corporations v. Anantharam Singh reported in ILR 1996 KAR 1088 has observed that once a claim is satisfied with respect to the damages caused to the car by the insurer, the question of the owner of the car claiming damages as against the tort - feisor before the Claims Tribunal does not arise inasmuch as the cost of repair having been already recovered through the insurer, the claimant or the owner of the case



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cannot claim compensation under the claim petition filed under the Act. It is useful to extract the observations made by the Division Bench, which would read as under:

(xx xx xxx--omitted)

22. In the case on hand, the facts are almost similar. It is not in dispute that in all the claim petitions, the claimants had taken the Mediclaim Policies and they have claimed the amount under the policy. We are of the view that the question of the claimants claiming compensation in the claim petition, which is filed under the Act for the amount expended by them for the treatment, certainly cannot be granted. The medical expenses as observed, is classified as a pecuniary loss. Pecuniary loss in its context means that the actual amount, which is expended by the claimant for treatment. If the said amount has been paid by the insurer under the Mediclaim policy, the question of the claimant claiming the very same amount for the very same purpose, which is inclusive of the expenses, which are incurred by him for the hospitalization and for his treatment does not arise. Undoubtedly, if the amount, which is received by the claimant under the Mediclaim policy falls short of the actual expenses expended by him, it is always open for him to claim the difference of amount spent from the Tribunal. But however he cannot claim compensation under both the Mediclaim policy as well as the claim petition filed under the Act. The decision of the Apex Court in Hellen C. Rebello's case was in respect of the Life Insurance Policy and not in respect of a Mediclaim Policy and therefore the said decision is distinguishable."

.....

15. In the instant case, both the policies



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have been issued by one and the same Insurance Company. According to the learned Counsel for the Insurance Company, the mischief was brought to light only when the claimant was required to produce the original bills before the Tribunal so as to sustain the claim; when he had to produce a certificate issued by the Insurer as Ext.A8, to the effect that a sum of Rs. 78418/- (as claimed in the claim petition before the MACT) had already been obtained by him on producing the original bills before the Insurance Company under the Mediclaim Policy. It was in the said circumstance that the said amount was sought to be set off.

.....

17. The remaining aspect is with regard to the 'premium' already satisfied by the party for obtaining the 'Mediclaim Policy' as mentioned above. The learned Counsel for the appellant Insurance Company submits that no contingency, as apprehended has taken place as there was no case for the claimant at any point of time during the subsistence of the policy, that any claim preferred before the Insurance Company was declined or restricted to a lesser extent, referring to satisfaction of the amount towards medical bills in respect of the injuries sustained in the road traffic accident. Still, it is stated by the learned Counsel for the Insurance Company that the Company is ready to give credit to the 'premium' satisfied by the claimant for obtaining the 'Mediclaim policy' during the relevant year which amount could be treated as an expense and claimed before the Tribunal."

16. The very same issue came up for consideration before the Division Bench of this Court in C.M.A.No.2232 of 2015. The Division Bench considered the following judgments:

- a) 2013 ACJ 2366 (New Delhi) [Bazaz Alliance General Insurance Company Limited Vs. Ganapat Rai Sehgal]
- b) 2013 ACJ 1437 [Cholamandalam MS General Insurance Company Ltd., Vs. A.Saravanan and another]
- c) 2013 ACJ 2382 [National Insurance Company Ltd., Vs. Deepmala Geol]
- d) 2013 ACJ 2609 [National Insurance Company Ltd., Vs. R.K.Jain]
- e) 2014 ACJ 1674 (Madras Bench) [National Insurance Company Ltd., Vs. C.RAmesh Babu]
- f) 1999 ACJ 10 (SC) [Helen C. Robello Vs. Maharashtra State



Road Transport Corporation Ltd.,]

g) AIR 1995 SC 755 [R.D.Hattangadi Vs. Pest Control (India) Pvt. Ltd.,]

h) 2002 ACJ 1441 [United India Insurance Co. Ltd., Vs. Patricia Jean Mahajan]

After considering the above judgments, the Division Bench of this Court, by the judgment dated 06.10.2015, in C.M.A.No.2232 of 2015, held that if claimants have received reimbursement under the Mediclaim Policy, the same has to be deducted from the medical expenses claimed under the Motor Vehicles Act. In paragraph Nos.16, 18 and 19, it has held as follows:

"16. As rightly contended by the appellant, the claim for medical expenses is not like LIC, where premium is paid by the insured, and on maturity, the sum assured under the policy is repaid with dividend to the assured, or in the case of death prior to maturity, paid to the legal representatives of the assured; and whereas, mediclaim or medical expenses are reimbursed to the surviving injured and to the legal representatives of the deceased, in case of death. Life insurance policy is by a contract of insurance is repayable in case of survival or death and that in case of mediclaim policy, reimbursement is made by the insurer. In the case of mediclaim, reimbursement of medical expenditure can be sought for, against the insurer of mediclaim policy, for the actual expenditure incurred, and if the said insurer reimburses the expenses incurred by the insured or the legal representatives of the deceased, then, the surviving victim or the legal representatives cannot seek for reimbursement of the very same expenditure from the tortfeasor or the insurer of the offending vehicle, as it would amount to double payment under the head 'medical expenditure'.

.....

18. Amounts received under the head, medical expenses or reimbursed, has to be set off, while estimating the actual monetary loss and consequently, the ultimate quantum of compensation. Even in Helen Rebello's case (cited supra), the Hon'ble Supreme Court has observed that 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. Thus, even in Helen Rebello's case (cited supra), a distinction

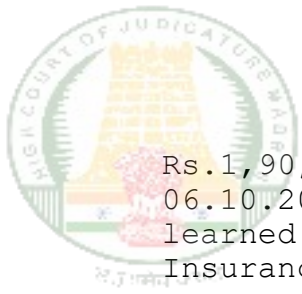


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between Life Insurance Policy and other Insurance Policy, taken by the employer for his employee, has been taken note of. When the injured has already been reimbursed by the employer of his son for the medical expenses incurred, can it be still contended that there was a pecuniary loss? Can it be claimed from the insurer of the offending vehicle, as if it was spent by him? and thus there was a monetary loss to be compensated. In the light of the above discussion, we are of the considered view that the claimant/injured is entitled only to the amount spent and suffered as monetary loss.

19. In the case on hand, the injured has not incurred any monetary loss, as the employer of the son of the injured has paid the hospital and medical charges, under the policy of the employee. While that is the fact situation, the claim of the respondent/claimant under the head, medical expenses, would be an amount, which has not been expended by him. Though it is claimed that the employee pays a separate premium under the mediclaim policy and that, a contention can be made that it is separate contract with the insurer, not being the insurer of the tortfeasor, against whom a claim for compensation is made, but when the expenses incurred have been reimbursed, it cannot be said that the claimant has suffered any pecuniary loss on account of the expenses incurred for the injuries and treatment."

17. The claimant is entitled to compensation for the amounts spent for medical treatment. But, if he has already got reimbursement under Mediclaim policy, he is not entitled to compensation again towards medical expenses. The payment under Mediclaim policy as well as the Motor Vehicles Act for the medical expenses will amount to double payment for the very same medical expenses. It is for the claimant to choose to claim compensation either under Mediclaim policy or under provisions of the Motor Vehicles Act. If amount received under Mediclaim policy is less than the amount actually spent for medical expenses, the claimant is entitled to only the balance amounts. In the present case, the claimant spent Rs.2,84,000/- towards medical expenses, but got only a sum of Rs.1,90,370/- as reimbursement from the Star Health Insurance under the Mediclaim policy. The claimant is entitled to the sum of Rs.93,630/- towards medical expenses. The Tribunal without properly considering the materials produced by the claimant, erroneously granted the entire amount of Rs.2,84,000/- towards medical expenses. The same is reduced to Rs.93,630/- [Rs.2,84,000 -



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Rs.1,90,370]. The Division Bench judgment of this Court dated 06.10.2015 made in C.M.A.No.2232 of 2015 relied on by the learned counsel appearing for the respondents 3 and 4 - Insurance Company is squarely applicable to the facts of the case.

18.At the time of accident, the claimant was working as a Medical Representative and was earning a sum of Rs.42,000/- per month. He failed to prove the same. The Tribunal failed to award any amount towards loss of income. The accident is of the year 2018. Considering the year of accident and nature of work, a sum of Rs.15,000/- per month is fixed as notional income of the claimant. Due to the injuries sustained in the accident, the claimant would not have worked atleast for a period of three months. Hence, a sum of Rs.45,000/- [Rs.15,000/- x 3 months] is awarded towards loss of income, at the rate of Rs.15,000/- per month for 3 months. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	-	45,000/-	Granted
2.	Transportation	20,000/-	20,000/-	Confirmed
3.	Extra nourishment	10,000/-	20,000/-	Enhanced
4.	Attendant charges	10,000/-	20,000/-	Enhanced
5.	Damage to clothes	2,000/-	2,000/-	Confirmed
6.	Medical expenses	2,84,000/-	93,630/-	Reduced
7.	Pain and sufferings	1,00,000/-	1,00,000/-	Confirmed
8.	Disability	1,80,000/-	3,00,000/-	Enhanced
9.	Loss of amenities	-	30,000/-	Granted
	Total	6,06,000/-	6,30,630/-	Enhanced by Rs.24,630/-



19. In the result, C.M.A.No.1767/2020 filed by the Insurance Company is partly allowed in respect of the head, medical expenses and C.M.A.No.35/2021 filed by the claimants is partly allowed. The amount awarded by the Tribunal at Rs.6,06,000/- is enhanced to Rs.6,30,630/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 3 and 4 are directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.192 of 2018. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court alongwith interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar(CS)

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Sub-Assistant Registrar

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To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Erode.

2.The Section Officer,
V.R Section,
High Court, Madras.

C.M.A. Nos.1767 of 2020 & 35 of 2021

sr i(CO)

A.SK(07.09.2021)