

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.04.2021

Delivered on: 17.04.2021

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

C.M.A.No.1977 of 2020

1.R.Suganya

2.M.Shanthi

... Appellants

Vs.

1.B.Suresh

2.The National Insurance Company Limited,

No.45, First Floor,

Moore Street, Chennai – 600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.02.2020 made in M.A.C.T.O.P.No.313 of 2018, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Thiruvallur at Poonamallee.

For Appellants : M/s.Subadra

For Respondents : M/s.Sreevidhya

for R2

R1 Ex-parte

JUDGMENT

The claimant is the appellant in this appeal and is aggrieved by the impugned Judgment and Decree dated 28.02.2020 passed by the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.313 of 2018. By the

impugned Judgment and Decree, the Tribunal has arrived at the total compensation of Rs.23,92,560/-. However, while awarding compensation, the Tribunal has deducted a sum of Rs.12,64,000/- being the amount awarded which was given to the claimants under the Group Insurance policy taken by the deceased.

2.The learned counsel for the appellant submits that the issue is no longer res-integra and is covered by the decision of the Hon'ble Supreme Court in **Mrs.Helen C. Rebello & Ors. Vs. Maharashtra State Transport Corporation & Anr** (1999) 1 SCC 90 [AIR 1999 Sc 3191]. The learned counsel for the appellant also placed these reliance on the following decisions of the Hon'ble Supreme Court and the Gujarat High Court and the decision of the Division Bench of this Court held as under:

(i)National Insurance Co Ltd Vs. Rekhaben and Others 2017 (2) TN MAC 183 (SC).

(ii)United India Insurance Company Ltd. Vs. Rehanaben Salimbhai Mukindo and Others 2019 ACJ 2498.

(iii)The New India Assurance Co Ltd Vs. K.Pushpalatha and Others in C.M.A.No.2414 of 2017 dated 12.09.2019.

3.On the other hand, the learned counsel for the respondent defending the impugned judgment and decree passed by the Tribunal by placed the decision of the Hon'ble Delhi High Court in **Noorjadi Khatoon and another Vs. Pintu Yadav and others** 2016 ACJ 500. The learned counsel for the respondent further submits that even as per the decision of the Hon'ble Supreme Court in **Mrs.Helen C. Rebello & Ors. Vs. Maharashtra State Transport Corporation & Anr** (1999) 1 SCC 90 [AIR 1999 Sc 3191] referred to supra, it has been held as follows:

so far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the 'pecuniary advantage which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, co-relating with the accidental death. The compensation payable under the Motor Vehicles Act

is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving motor vehicle would not be covered under the Motor Vehicles Act. Thus, the application of general principle under the common law of loss and gain for the computation of compensation under this Act must co-relate to this type of injury or deaths, viz, accidental. If the words 'pecuniary advantage' from whatever source are to be interpreted to mean any form of death under this Act it would dilute all possible benefits conferred on the claimant and would be contrary of the spirit of the law. If the 'pecuniary advantage' resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets movable, immovable, shares, bank accounts, case and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. **By such an interpretation the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accident death. Thus, under the present Act whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death. The constitution of the Motor Accidents Claims Tribunal itself under Section 110 is, as the Section states:**

"...for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to,..."

4.The learned counsel for the respondent further drew my attention to Exhibit in Personal Accident Policy in the Group Insurance Company and submits that the amount has been rightly deducted.

5.By way of rejoinder, the learned counsel for the appellant submits that the Insurance is social security scheme in which the insured pays premium or contributes according to the scheme and gets the pecuniary benefit. However compensation under Motor Vehicles Act is given to victims of accidents by the Insurer on behalf of the insured, who statutorily take an Insurance policy as per Section 146 of MV Act, the object being victims of accident should get damages irrespective of the financial capacity of the insured. The insured under the MV Act is a tortfeasor, who caused the accident and becomes liable to pay compensation to the claimants for the loss of income due to the accident. Further Tortfeasor cannot have his liability reduced by the amount which the claimants get as a result of life insurance or group insurance claim, Provident fund etc. Therefore the deduction made by the Tribunal of Rs.12,64,000/- as deduction for group Insurance death claim from total

compensation of Rs.23,92,560/- is not warranted and against settled Law hence liable to be set aside.

6.I have considered the arguments advanced by the learned counsel for the appellant and respondent. I have also considered the decisions cited by learned counsel for the appellant and the respondent.

7. The Apex Court in **Helen C. Rebello (Mrs.) vs. Maharashtra State Road Transport Corporation**, (1999) 1 SCC 90 : (AIR 1999 SC 3191) has merely held that payment of pensionary benefits to the family of the deceased are all a “pecuniary advantage” receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction.

8.The Court there further held that “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 the 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, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the 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 a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. **The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the 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 the 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.”

9.In fact, the Hon’ble Supreme Court has held that if deduction were to be permitted, the tortfeasor will go scot free merely because the injured or the deceased was well endowed. In **United Insurance Co Versus Ltd Patricia Jean Mahajan**, 2002 (6) SCC 281, the Honourable Supreme Court held that the amount received by the claimant is on account of Social Security from an Employer must have in nexus/relation with the accidental injury or death, in order to be deductible from the amount of compensation. The court therefore decline to deduct the amount from the amount of compensation receivable on account of the motor accident.

10.In **Vimal Kanwar v. Kishore Dan**, (2013) 7 SCC 476 ,the

Honourable Supreme Court observed as under

21.“Compassionate appointment” can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as “pecuniary advantage” that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.

11.However, in **Reliance General Insurance Co. Ltd. v. Shashi Sharma**, (2016) 9 SCC 627 while dealing with an identical situation, the held as under:-

18.The principle discernible from the exposition

in Helen C. Rebello case [Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] 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 dependants 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 dependants of the deceased government employee who dies in harness, it is unfathomable that the dependants 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.

12.It must be however recalled that the above decision was rendered in the context of Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006 framed under Art. 309 of the Constitution of India. Its preamble read as under:-

“No. G.S.R. 19/Const./Art.309/2006.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Haryana hereby makes the following rules to grant the compassionate assistance by way of ex gratia

financial assistance on compassionate grounds to members of the family of a deceased government employee who dies while in service/missing government employee, namely:”

13.In the present case there was only a Personal Accident Policy (Group). The aforesaid policy cannot be compared with the rules framed under Article 309 of the Constitution of India **Reliance General Insurance Co. Ltd. v. Shashi Sharma**, (2016) 9 SCC 627. It was a private contract between the deceased who was the insured person and the beneficiaries were his dependents. In the case of group insurance, there is the payment of premium and the compensation is not automatic. Merely because the deceased may have had such a policy covering the risk by itself will not be that the amount payable under the provisions of the Motor Vehicles Act, 1988 has to be deducted. A deceased may insure to protect himself and his family from uncertainties of life to save his family from penury by taking different insurance policies. However, compensation under such policies which liabilities subsist as long as the deceased paid premium and under a private arrangement/contract with the insurer cannot be deducted. The Hon'ble Supreme Court in **Helen C. Rebello (Mrs.) vs. Maharashtra State Road Transport Corporation**, (1999) 1 SCC 90 : (AIR 1999 SC 3191)

recognised this in Paragraph 35 which has been extracted above. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the 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 the 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.”

14. Therefore, there cannot be any comparison. As mentioned earlier, if an insurance company is allowed to make such deductions from the compensation payable, the very purpose of providing insurance under section 147 of the Motor Vehicles Act, 1988 would be defeated/rendered otiose. Section 167 of the Motor Vehicles Act, 1988 has also not provided for such deductions. Therefore, I am inclined to allow this

appeal as prayed for.

15.I therefore direct the second respondent Insurance Company to pay Rs.12,64,000/-, being the portion of the compensation which was ordered to be deducted to the appellants within a period of eight weeks from date of receipt of this order.

16.The second respondent Insurance Company is therefore directed to deposit a sum of Rs.23,92,560/- together with interest as ordered by the Tribunal within a period of eight weeks from date of receipt of this order less any amount already deposited to the credit of M.A.C.T.O.P.No.33 of 2018 before the Motor Accidents Claims Tribunal,III Additional District Court, Thiruvallur at Poonamallee. On such deposit, the appellant shall be entitled to withdraw the amounts in the same proportion as was ordered by the aforesaid Tribunal.

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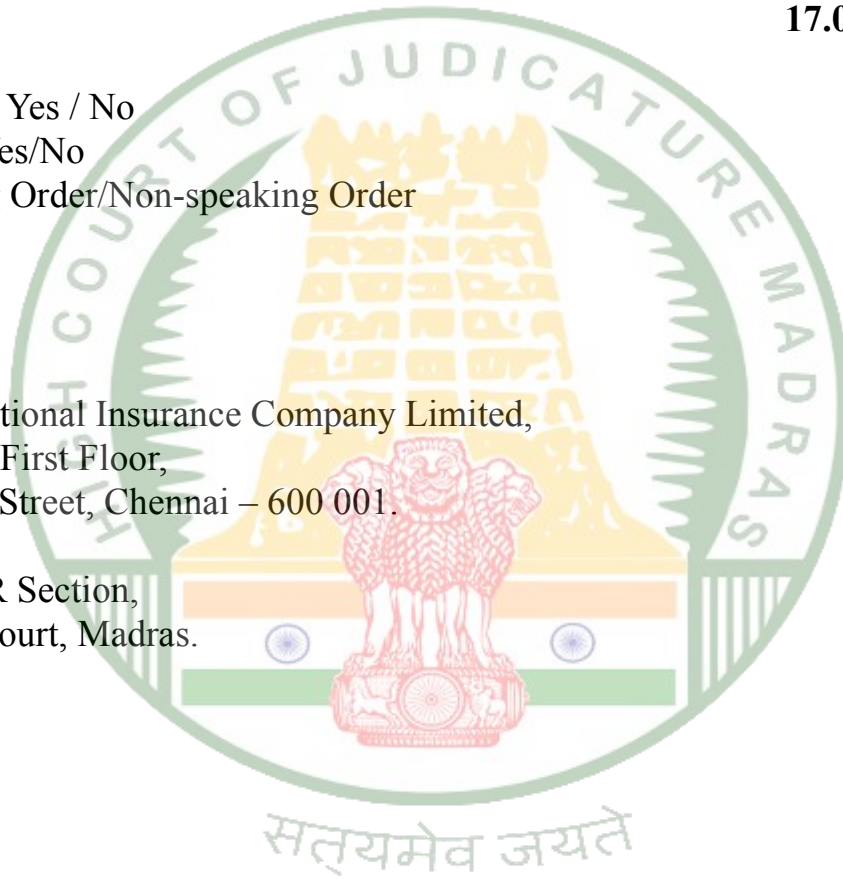
17.The above Civil Miscellaneous Appeal stands allowed with the above observation. No cost.

17.04.2021

Internet : Yes / No
Index : Yes/No
Speaking Order/Non-speaking Order
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To:

- 1.The National Insurance Company Limited,
No.45, First Floor,
Moore Street, Chennai – 600 001.
- 2.The VR Section,
High Court, Madras.



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C.SARAVANAN, J.

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Pre-Delivery Judgment in
C.M.A.No.1977 of 2020

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