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

FAO-399-2022
Decided on : 31.08.2022

TATA AIG General Insurance Co. Ltd. ...... Appellant

Versus

Jyoti Vaid and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjeev Kodan, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent No.1.

Mr. Saurabh Savara, Advocate
for respondent No.3.

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Manjari Nehru Kaul, J.(Oral)

Learned counsel appearing for respondents No.1 and 3 have filed their power of attorneys in Court today, which are taken on record subject to all just exception.

Instant appeal has been filed by the appellant-Insurance Company challenging the award dated 12.10.2021 passed by Motor Accident Claims Tribunal, Chandigarh (hereinafter called as 'the Tribunal') in the claim petition filed under Section 166 of Motor Vehicles Act wherein the following compensation was assessed and awarded to the claimant on account of injuries suffered by her in a motor vehicular accident, which took place on 19.01.2016:

Sr. No.	***Head***	***Amount***
1	Medical expenses	Rs.5,49,130/-
2	Pain and suffering	Rs.15,000/-
3	Attendant charges	Rs.5,000/-
4	Transportation charges	Rs.10,000/-
5	Special diet	Rs.10,000/-
6	Loss of earning during the period of treatment	Rs.20,000/-
7	Loss of future earnings	Rs.8,49,600/-
	Total compensation	Rs.14,58,730/-

The aforementioned amount of compensation along with interest @ 9% p.a. from the date of filing of the petition till the date of its realization, was ordered to be paid by respondent No.3.

Learned counsel for the appellant-Insurance Company *inter alia* contends that the learned Tribunal gravely erred in not deducting Rs.5,23,059/- (approx.) from the compensation awarded by it as the medical expenses to that extent incurred by the injured-claimant had been duly reimbursed by the Star Health and Allied Insurance Company. He submits that the said fact was also conceded by the injured appellant in her testimony before the learned Tribunal. Hence, the claimant was not entitled to the amount of compensation, which stood reimbursed to her by the said insurance company under the medical claim policy. Learned counsel while placing reliance on the judgment of Hon'ble Madras High Court in ***New India Assurance Co. Ltd. and others vs. R.Ramesh and others, 2021(1) TNMAC 481*** and Hon'ble Delhi High Court in ***IFFCO Tokio General Insurance Co. Ltd. vs. Shambhu Pathak and others, 2012(13) RCR (Civil) 347*** prays for setting aside the impugned award in the wake of the above submissions.

Per contra, learned counsel appearing for respondent No.1 and 3 have opposed the prayer and submissions made by the learned counsel for the appellant. Learned counsel for respondent No.1 while placing reliance upon the judgment of Hon'ble Apex Court in ***Helen C. Rebello Vs.Maharashtra State Road Transport Corporation, 1998 AIR (SC) 3191***, has vehemently argued that the Tribunal had rightly not deducted the amount in the sum of Rs.5,23,059/-, which was reimbursed to her by the Star Health and Allied Insurance Company and thus, no illegality had been committed by the learned Tribunal. He has thus, prayed for dismissal of the appeal.

Heard learned counsel for the parties and perused the relevant material.

This Court does not find any force in the submissions made by the learned counsel for the Insurance Company. It needs to be observed that compensation, which is awarded under the Motor Vehicles Act is statutory in nature whereas under an insurance policy like the one in the instant case, which was in the name of the claimant-respondent, it would be akin to a contract between the insurer and insured. In an insurance policy, the insured contributes his own money by paying regular premium whereas on the other hand the amount of compensation received under the Motor Vehicles Act on account of an injury suffered in an accident or in the case of death as the case may be, it is not as a result of any contribution made by the claimants.

The Hon'ble Apex Court in *Helen C. Rebello's case(supra)*has held as under:

> *"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."*

In the wake of above ratio of law, this Court has no hesitation to observe that the learned Tribunal did not in any manner err in not deducting the amount, which had been reimbursed to the claimant-injured by Star Health and Allied Insurance Company. Accordingly, the instant appeal being devoid of merit stands dismissed.

31.08.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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