IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.2155 of 2021
and C.M.P. No.11910 of 2021

Judgment reserved on 23.01.2024	**Judgment pronounced on 22.03.2024**

New India Assurance Company Limited
Motor Third Party Claims Hub,
No.20B, Erode to Kangayam Road,
Avalpoondurai, Modakkurichi Taluk,
Erode District – 638 115. .. Appellant

Vs.

1.S.Govendran
2.P.M.Viswanathan .. Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.473 of 2018 dated 18.12.2019 on the file of Special Subordinate Judge, Erode.

For Appellant : Mrs.S.R.Sumathy

For Respondents : Mr.M.Mohamed Riyaz
No appearance for R2

J U D G M E N T

The Insurance company is the appellant herein challenging the award passed by the Tribunal dated 18.12.2019 in MCOP No.473 of 2018 on the file of Special Subordinate Judge, Erode on the ground of quantum of compensation.

2. The factum of accident, manner of accident, vehicle being insured with the appellant/Insurance company and the rash and negligent driving by the second respondent are not in dispute. Accordingly, the finding rendered by the Trial Court with regard to negligence are hereby confirmed.

3. On the point of quantum of compensation, heard the learned counsel for the appellant/insurance company as well as learned counsel appearing for the first respondent.

4(a) Before the Tribunal, the first respondent examined himself as PW1, Manager of Ganga Medical Centre where the first respondent/claim petitioner has undergone treatment was examined as PW3. The doctor who has issued discharge summary was examined as PW4. Ex.P2 is the wound certificate, Ex.P9 is the treatment summary issued by Vijaya Hospital and Ex.P10 is the inpatient bill of Vijaya Hospital. Ex.P16, P18, P20 & P22 are all discharge summaries of Ganga Hopsital.

4(b) The claim petitioner in this case is an Village Assistant. For the claim of compensation, it is to be stated that ***Restitutio ad Integrum or restituttuio in Integrum*** is a latin term which means restoration to original condition. It is one of the primary guiding principles behind the awarding of damages in common law negligence claims.

5. Heard the learned counsel appearing for the appellant/Insurance company as well as the respondents 1 to 4 / claim petitioners and perused the materials on record.

6. On fair perusal of Ex.P12, 16, 18, 20 & 22 – discharge summaries marked through PW4 – Doctor from Ganga Hospital, Coimbatore, it is seen

that the claim petitioner was admitted five times in the hospital, i.e. 01.02.2017 to 27.02.2017, 24.04.2017 to 01.05.2017, 07.11.2017 to 13.11.2017, 12.08.2017 to 15.08.2017 and 17.07.2018 to 21.07.2018. I had an occasion to consider the plea whether the amount that has got reimbursed under the medical claim taken by the claim petitioner has to be deducted from the claim or not, in CMA (MD) No.729 of 2017 wherein I had held as follows -

> 8. In the decision reported in Saravana's case **[2012 (1) TNMAC 606]** cited supra, it is observed as under:
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> *"The principle enunciated in the said decision is a fitting answer to the issue involved in this appeal that in case the claimant receives the benefit as a consequence of injuries sustained, then he is not entitled for the same as compensation once again. But it does not cover the cases where the amount of payment received is not dependent upon the injury sustained on meeting with the accident. Therefore, in my considered opinion, the case relied on by the learned counsel for the respondent No.1, which was rendered based on the LIC policy, cannot be made applicable to the facts of the present case. So far as LIC policy is concerned, the policyholder is entitled for the payment of entire premium on maturity or the heirs are entitled for the payment in the event of his death. The payment under the life insurance policy does not depend upon the injury sustained in meeting with the accident. On the other hand, as far as the medi-claim policy is concerned, the amount is payable to the claimant when he sustains injuries in an accident. Hence, the compensation for the injuries sustained by him under the head 'medical treatment' cannot be granted."*

9. In view of the clear reasoning made by the learned Judge in the said Saravana's case explaining the judgment of the Hon'ble Supreme Court was in connection with the medi-claim policy amount while the present case is for medical claim, which is arising out of injury. So far as LIC policy is concerned, the policy holder is entitled for the payment of entire premium on maturity or the heirs are entitled for the payment in the event of his death. The payment under the life insurance policy does not depend upon the injury sustained in meeting with the accident. On the other hand, as far as the medi-claim policy is concerned, the amount is payable to the claimant when he sustains injuries in an accident. Hence, the compensation for the injuries sustained by him under the head 'medical treatment' cannot be granted and hence in view of the decision in the Saravana's case, I have no hesitation to hold that the judgment of the Saravana's case was not placed before the learned Single Judge who had rendered the decision in ***National Insurance Co., Ltd., v. C.Ramesh Babu*** *[2013 (2) TNMAC 636]. Hence, I am inclined to follow the decision reported in* ***2012 (1) TNMAC 606 [Cholamandalam MS General Insurance Co., Ltd., v. A.saravanan]*** *since the decision in Ramesh Babu's case is no longer holds, accordingly, the amount reimbursed under medi-claim policy is held to be deductable.*

10. Admittedly, Rs.4,00,000/- has been paid by the insurance company under the medi-claim policy and hence medical expenses as per Ex.P5 though it has been proved by RW1 that a sum of Rs.4,00,000/- has been paid to the hospital directly by the insurance company under a medical policy coverage. Grant of medical expenses is only against the amount spent by the injured claimant or the victim of road accident and what has not been paid by the petitioner to the hospital cannot be *granted as compensation in a claim under the Motor Vehicles Act. The compensation for medical expenses is a matter of reimbursement and hence once the insurance company has chosen to compensate the victim of road accident for medical expenses, the same cannot be once again claimed under the Motor Vehicles Act as held by the Madras High Court reported in* ***2012 (1) TNMAC 606.***

7. Accordingly, I have no hesitation to hold that in view of the judgment of the Hon'ble Supreme Court, the amount received by any petitioner under the medi-claim policy cannot be claimed as compensation towards medical expenses.

8. On perusal of the lower court records, I find that Ganga Medical Centre and Hospital has issued a copy of the medical bill - Ex.P13 wherein there is an endorsement that it is a duplicate copy and the original submitted for insurance claim which is to the extent of Rs.4,27,680/-. Since the first respondent has got reimbursement of the said amount of Rs.4,27,680/- from the mediclaim insurance, as could be seen from the endorsement made in the duplicate copy of the medical bill, Ex.P13 and in view of the judgment of this Court in CMA(MD) No.729 of 2017 cited supra, I hold that the first

respondent is not entitled to claim the said amount of Rs.4,27,650/- (rounded off) as compensation from the appellant/insurance company. Thus, the amount awarded by the Tribunal towards compensation for medical expenses is reduced from Rs.7,01,000/- to Rs.2,73,350/-.

9. The next point that was urged by the learned counsel for the appellant/Insurance company is that the claim petitioner has availed 105 days Earned Leave and 36 days Medical Leave. Since he is a Government Servant, the amount could have been reimbursed and therefore, the compensation awarded towards Loss of Earning during treatment period has to be deducted. I am unable to place reliance on the earlier order for more than one reason.

9(a) In the decision reported in ***2007 (3) TNLJ 262 (Civil) in The Managing Director, Tamil Nadu State Transport Corporation (VPM DIV II) Ltd. v. Y.Selvaraj*** it has been held that even if an injured on a road accident remained on medical leave for certain period, he is entitled to compensation for loss of leave, though he is paid the leave salary. In view of the said decision, the claim petitioner is entitled for reimbursement of the said amount. Accordingly the claim petitioner is entitled to get a sum of Rs.76,257.50 (Rs.16,225 x 141/30), rounded off to Rs.77,000/- as compensation towards loss of earning during treatment period and hence the amount awarded by the Tribunal under the said head is confirmed.

9(b) Considering the nature of injuries, place of accident, residence of the petitioner, location of the hospital and the period of treatment, the Tribunal has rightly awarded a sum of Rs.75,000/- towards transportation and Rs.10,000/- towards extra nourishment which is just and fair and hence the same are confirmed.

9(c) It is seen from the discharge summaries that the claim petitioner has taken treatment as inpatient for 50 days. Considering the period of treatment as inpatient and also the age of the petitioner being 51 years at the time of accident and the fact that he was admitted five times in the hospital and in five days, eight surgeries were conducted and totally eleven surgeries were done, Rs.25,000/- awarded by the Tribunal towards attender charges is just and reasonable and the same is confirmed.

9(d) PW4 - Doctor has deposed that for removal of plates, the claim petitioner has to undergo another surgery which will cost Rs.1,00,000/-. Hence, the amount of Rs.1,00,000/- awarded by the Tribunal towards future medical expenses and Rs.2,000/- towards damages to clothes are confirmed. Considering the fact that the claim petitioner has undergone eleven surgeries, the compensation awarded by the Tribunal towards pain and sufferings at Rs.2,00,000/- is also confirmed.

9(e) The year of accident being 2017, PW4 – Doctor has assessed the disability of the claim petitioner as 88%. PW3 – Village Administrative Officer would state that the claim petitioner is continuing his job and therefore, the Trial Court has come to the conclusion that the claim petitioner has not suffered any functional disability and his earning capacity has not been reduced. Hence, I am inclined to award a sum of Rs.5,000/- per disability for 88% disability and Rs.5,00,000/- awarded by the Tribunal towards permanent disability is reduced to Rs.4,40,000/- (88 x 5000). Thus, the break-up details of the compensation is as under :

Sl. No	Heads under which the amount is awarded	Amount awarded by the Tribunal – Rs.	Amount awarded by this Court – Rs.
1.	Loss of Earnings	77,000/-	77,000/-
2.	Transport to hospital	75,000/-	75,000
3.	Extra nourishment	10,000/-	10,000/-
4.	Attender charges	25,000/-	25,000/-
5.	Future Medical Expenses	1,00,000/-	1,00,000/-
6.	Damages for clothes and articles	2,000/-	2,000/-
7.	Medical expenses	7,01,000/-	2,73,350/-
8.	Pain and Sufferings	2,00,000/-	2,00,000/-
9.	Permanent disability & loss of earning power	5,00,000/-	4,40,000/-
	Total	**16,90,000/-**	**12,02,350/-**

10. In total, the claim petitioner is entitled to a sum of **Rs.12,02,350/- (Rupees Twelve Lakhs Two Thousand Three Hundred and Fifty only)** as compensation, to the extent indicated above.

11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the award amount from **Rs.16,90,000/- to Rs.12,02,350/-** to the extent indicated above, along with 7.5% interest per annum.

(ii) the appellant/Insurance Company is directed to deposit the modified award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the first respondent/claim petitioner is permitted to withdraw the modified award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit before the Tribunal, if the entire award amount has already been deposited by them.

(v) No costs. Consequently, connected Miscellaneous Petition is closed.

22.03.2024

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Index : Yes/No
Internet : Yes/No
Neutral Citation:Yes/No
Speaking Order: Yes/no

To

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

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

RMT.TEEKAA RAMAN.J,

rgr

Judgment made in
C.M.A.No.2155 of 2021

22.03.2024