IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :13.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3551 of 2021 and
C.M.P.No.20672 of 2021

New India Assurance Company Limited
L.M.C Complex
Nehru Veethi, Villupuram ... Appellant

Vs.

1.Palani
2.Vijayaraj ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree in MCOP.No.283 of 2016 dated 19.02.2020 on the file of the Motor Accidents Claims Tribunal Judge, Special Sub-Judge-II, Villupuram.

For appellant : M/s.S.R.Sumathy
For Respondents : Mr. M.A.P.Thangavel for R1
for M.Lokesh
R2- Notice-Dispensed with

JUDGMENT

Aggrieved by the quantum of compensation granted by the Tribunal, the Appellant/Insurance Company has come before this Court by way of this Civil Miscellaneous Appeal.

2. It is not in dispute that the first respondent/claimant suffered grievous injury in a road accident that had taken place on 17.04.2016. The 1st respondent/claimant laid a claim for Rs.40,00,000/-. The Tribunal awarded a sum of Rs. 25,45,151/-. Questioning the quantum of compensation, the Insurance Company has filed this appeal. Both the learned counsel for the Appellant as well as first respondent/claimant have not advanced any arguments on the question of negligence and liability. Therefore, the facts necessary for deciding the question of negligence and liability have not been considered in the present appeal.

3. The learned counsel for the Appellant/Insurance Company submits that the appeal is restricted to the value of Rs.4,00,000/- received by claimant from his employer under the head 'medical reimbursement'. The learned counsel, by taking this Court to the evidence of PW1, submitted that wife of the victim clearly admitted that she received a sum of Rs.4,00,000/- from the employer of the victim under medical reimbursement plan. Therefore, the learned counsel submitted that the said amount received by them shall be

deducted from the medical expenses incurred by the victim at the time of calculating the compensation.

4. The learned counsel for the first respondent/claimant, by taking this court to Exhibit P12, medical bills, submitted that the victim incurred an expenditure of Rs. 9,92,060/- towards medical charges for hospital and the said document has not been properly taken into consideration by the tribunal.

5. A perusal of Exhibit P12, medical bills, produced by the claimant would suggest that the net hospital charges as per the consolidated bill furnished to the claimant with voucher numbers, bill date etc., is Rs.9,92,060.62 paise. Therefore, the medical expenses incurred by the claimant towards treatment is taken as Rs.9,92,060/-. The wife of the victim was examined as PW1. She clearly admitted that she received a sum of Rs.4,00,000/- from the employer of the victim under medical reimbursement. Therefore, the said amount is liable to be deducted from the total amount mentioned in Exhibit P12. In this regard, it would be appropriate to refer to the judgment of the Division Bench of this Court in ***Royal Sundaram Alliance Insurance Company***

Ltd. Vs M.Satya Rao and another in CMA.No. 2232 of 2015. The relevant observation of the Division Bench of this Court reads as follows:-

> "*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 insurers 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 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".

6. In the light of the law laid down by the division bench of this court, this court has no hesitation in deducting a sum of Rs.4,00,000/- received by the victim under the medical reimbursement plan from the hospital bill produced by the claimant. Therefore, the claimant is entitled to only Rs.5,92,060/- under the head 'medical expenses' as against Rs.9,92,060/- mentioned in Exhibit P-12, the consolidated bill.

7. The tribunal has not taken into consideration the Exhibit P-12 series properly. The amount mentioned in the consolidated bill has been overlooked. It has taken the total of the medical bill as Rs. 8,27,029/- instead of Rs.9,92,060/-.

8. Though the claimant produced bills for undergoing physiotherapy to the tune of Rs.1,86,900/-, the tribunal rejected the bills as not believable. However, taking into consideration the serious

disability suffered by the claimant and the necessity for physiotherapy for some time, the tribunal awarded a lump sum of Rs.50,000/- towards physiotherapy.

9. A perusal of the Exhibit P4, Discharge summary would indicate that at the time of discharge, the victim was on Ryles Tube and he was advised to undergo limb physiotherapy. He was also advised to undergo tracheostomy. Therefore, it is clear that the claimant would have incurred some expenditure for further treatment and also for physiotherapy even after discharge. Exhibit P12 series only mentions the expenditure incurred by the victim till discharge. Therefore, the tribunal is justified in granting a lump sum of Rs.50,000/- towards physiotherapy expenses. If that amount is added with the medical expenses already arrived at by this court, the total amount under the head 'medical expenses' will be Rs.6,42,060. Therefore, the amount of Rs.6,90,129/- awarded by the tribunal is reduced to Rs.6,42,060/-. Since no arguments were advanced challenging the award of compensation under various other heads, the same were not disturbed.

10. In view of the discussions made earlier, the Civil Miscellaneous Appeal is partly allowed and the amount of Rs. 25,45,151/- awarded by the tribunal is reduced to Rs.24,97,082/-. The award passed by the tribunal is modified as follows:-

Sl. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or reduced or enhanced or granted**
1.	Pain and Suffering	1,00,000/-	1,00,000/-	Confirmed
2.	Attendant Charges	1,00,000/-	1,00,000/-	Confirmed
3.	Damage to clothes	1,000/-	1,000/-	Confirmed
4.	Transportation Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of income	5,76,422/-	5,76,422/-	Confirmed
6.	Permanent Disability	10,62,600/-	10,62,600/-	Confirmed
7.	Medical Expenses	6,90,129/-	6,42,060/-	Reduced
	Total	**25,45,151/-**	**24,97,082/-**	**Reduced by Rs.48,069/-**

11. It is stated by the learned counsel for the appellant that the appellant/Insurance company has already deposited a sum of Rs. 15,00,000/-. The 1st respondent is entitled to interest at the rate of 7.5% per annum (excluding the delay period, if any) from the date of filing of the claim petition till the date of realization. The appellant/Insurance company is directed to deposit a balance sum along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is entitled to withdraw the said amount along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

13.02.2025

Index:Yes
Internet:Yes
nr

To

1. Motor Accident Claims Tribunal,
   Special Sub-Judge-II, Villupuram.

2. The Section Officer,
   VR Section,
   High Court, Madras.

S.SOUNTHAR, J.

nr

CMA No.3551 of 2021 and
C.M.P.No.20672 of 2021

13.02.2025

C.M.A.No.3551 of 2021

S.SOUNTHAR,J.

No clarification is required. Earlier order stands.

21.03.2025

dm