

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on	Judgment Pronounced on
01.04.2022	13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.729 of 2017
and
C.M.P(MD)No.7716 of 2017

The Manager,
TATA AIG General Insurance Co., Ltd.,
P.O.Box No.9407, Peninsula Corporate Park,
Nicholas Piramal Tower,
9th Floor, Ganpatrao,
Kadam Marg, Lower Parel,
Mumbai-400 013.

.. Appellant/ 2nd Respondent

Vs.

1.Kathamuthu

.. 1st Respondent /Petitioner

2.Saraswathi

.. 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 18.04.2016 made in M.C.O.P.No.196 of 2014, on the file of the Motor Accidents Claims Tribunal/Principal Sub Judge, Karur.

For Appellant : Mr.J.S.Murali

For R1 : Mr.R.Suresh Kumar

JUDGMENT

The insurance company is the appellant herein challenging the award passed in M.C.O.P.No.196 of 2014 on the ground of quantum of compensation. The factum of the accident, manner of the accident, rash and negligence on the part of the driver of the offending vehicle and the policy coverage of the vehicle with the appellant/insurance company are not in dispute.

2. The learned counsel for the insurance company could contend that by granting the award amount of Rs.9,08,954/- for medical expenses, as per Ex.P5-medical bill, the tribunal has committed an error without noticing the fact that a sum of Rs.4,00,000/- being the amount reinvested by the insurance company under the medi-claim policy to the injured, the claimants has already been granted and the insurance company has already been paid the amount to the hospital and hence, the same cannot be awarded. Based upon the oral evidence of the Doctors-PW2 and PW3

coupled with the Ex.P7-discharge summary and Ex.P11-disability certificate has rightly come to the conclusion that the claimant injured had suffered permanent disability to the extent of 30% and since the date of accident being of the year 2004 for 1% disability Rs.2500/- was granted and accordingly, for 30%, $[30 \times \text{Rs.}2,500/-] = \text{Rs.}75,000/-$ was granted and the same is appeared to be fair and reasonable.

3. The quantum of compensation granted to pain and suffering, loss of income during the treatment period, value of two bullocks, for damage of bullock cart are appears to be just and reasonable. After perusing the quantum of compensation, Rs.50,000/- was granted for permanent disability and hence, paying the double compensation the same is hereby stands vacated. The pain and suffering amount is hereby confirmed. Towards attender charge Rs.10,000/- is hereby granted and for nutrition and extra nourishment is enhanced from Rs.5,000/- to Rs.10,000/- and for loss of amenities Rs.10,000/- is granted.

4. The learned counsel for the insurance company relied upon the decision reported in **2012 (1) TNMAC 606** that the amount reimbursed

under medi-claim policy is held to be deductible.

5. Per contra, the learned counsel for the first respondent relied on **2013 (2) TNMAC 636** and submitted that medi-claim policy is not deductible and is not retrievable in a claim for compensation under Motor Vehicles Act.

6. My attention was drawn to the judgment of the Hon'ble Apex Court, which was in connection with the life insurance company policy amount, in *Helen C. Rebello and others v. Maharashtra State Road Transport Corporation and another*, [1999 ACJ 10: 1991 (1) LW 208] and the relevant paragraph is extracted hereunder:

“33.Thus, it would not include that which claimant receives on account other form of deaths, which he would have received even apart from accidental death. Thus, such. pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, 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. However, our legislature has taken note of such contingency, through the proviso of [Section 95](#). Under it the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee.”

7. In *United India Insurance Co. Ltd. vs Mrs. Patricia Jean Mahajan* 2002 ACJ 1441 the Hon'ble Apex Court has held as follows:

“24.... it is clear that the deductions are admissible from the amount of compensation in case the Claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. It does not cover cases where the payment received is not dependent upon an injury sustained on meeting with an accident.”

8. In the decision reported in Saravana's case [2012 (1) TNMAC 606] cited supra, it is observed as under:

“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 deductible.

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** and accordingly, the compensation granted under the medical bill a sum of Rs.9,08,954/- is reduced to Rs.5,08,954/- and hence the entire compensation is reduced from Rs.11,86,954/- to Rs.7,51,954/-. Accordingly, the compensation arrived by this Court is summarised as under:

Sl. No.	Description	Amount awarded by		Awarded by this Court
		Tribunal	This Court	
1.	Disability	Rs.75,000/-	Rs.75,000/-	Confirmed
2.	Medical Expenses	Rs.9,08,954/-	Rs.5,08,954/-	Reduced

3.	For pain and suffering	Rs.80,000/-	Rs.80,000/-	Confirmed
4.	For Permanent Disability	Rs.50,000/-	-----	Vacated
5.	For Loss of Income	Rs.25,000/-	Rs.25,000/-	Confirmed
6.	For loss of Bullocks	Rs.30,000/-	Rs.30,000/-	Confirmed
7.	For Transportation	Rs.11,000/-	Rs.11,000/-	Confirmed
8.	For Nutrition and nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
9.	For loss of Bullock Cart	Rs.2,000/-	Rs.2,000/-	Confirmed
10.	For loss of Amenities	-----	Rs.10,000/-	Granted
11	For Attender Charge	-----	Rs.10,000/-	Granted
	Total Compensation	Rs.11,86,954/-	Rs.7,61,954/-	

11. In the result, this Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. The insurance company is directed to deposit the modified compensation of Rs.7,61,954/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No.196 of 2014, on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Judge, Karur, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made by the Insurance Company, the claimants are permitted to

withdraw the same, as apportioned by the Tribunal, after following the due process of law. In case, if entire award amount as ordered by the Tribunal is deposited, the Tribunal is directed to refund the excess award amount, if any, to the appellant/Insurance Company with proportionate interest. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2022

Index:Yes/No
Internet:Yes/No
PJJ

To

1. The Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Periyakulam.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.729 of 2017

RMT.TEEKAA RAMAN.,J.

PJL

**PRE-DELIVERY JUDGMENT
MADE IN
C.M.A(MD)No.729 of 2017**

13.04.2022