
(2012) 01 DEL CK 0215
In the Delhi High Court
Case No : MAC App. 191 of 2010

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Ganpat Rai Sehgal and Others	RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Citation : (2013) ACJ 2366 : (2012) 3 AD 421 : (2012) 186 DLT 533

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Rajat Brar with Mr. Amrit Jain, for the Appellant; Naveen Goyal Advocate with Ms. Suman N. Rawat, Advocate., for the Respondent

Judgement

G.P. Mittal, J.—The Appellant impugns the Award passed by the Motor Accident Claims Tribunal (the Tribunal), whereby the Respondent No.1 (Petitioner in Suit No. 217/08) was granted a compensation of Rs. 3,51,270/- due to the injuries i.e. Fracture proximal tibia left (Schatzker - VI) with fracture pilon right fracture bimalleolar, caused to him on account of a road accident.

2. On 07.04.2006, the Respondent No.1 and Sudhershana Arora (Petitioner in Suit No.224/08) were walking together; when they were crossing the Outer Ring Road, A&B Block, Meera Bagh, Delhi, a car bearing No. DL-4-C-AG-1583 hit them due to which they fell on the road and got injured. The Appellant herein, have preferred to file an appeal in Suit No.217/08.

3. The main contention of the Appellant is that the Respondent No.1 (Claimant-PW3) admitted to have received Rs. 1,43,921 from his mediclaim policy, while deposing before the Tribunal. Therefore, in view of this admission he was not entitled to receive any reimbursement from the insurer of the offending vehicle for the expenditure he incurred for the medical treatment, which he underwent due to the accident.

4. In United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., , the Supreme Court held as under:-

24. Mr. Soli J. Sorabjee submitted that while assessing the amount of compensation, the benefits which have accrued to the claimants by reason of death must also be taken into account. A kind of balancing of losses and the gains or benefit by reason of death would be necessary. In support of the above contention, he has referred to the decision in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, . It is a decision by a three-Judge Bench of this Court, and at SCR p. 938 the observations made by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 (AC p.601) has been quoted which read as follows:-

The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately.

25. To further elaborate the above proposition, observations made by Lord Wright in Davies case (supra) have also been quoted. They read as follows:

The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately placed in diminution of the damages must be considered. The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to him by reason of the death.

The learned Counsel laid stress on the last part of observation made to the effect that - for the purposes of balancing losses and gains any pecuniary advantage which from whatever source come to them, has to be considered.

26. It is submitted in Gobald's case (supra) the principle of Davies Case (supra) was referred and taken into consideration. Reliance has also been placed on a decision in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., , particularly to the observations made by the Court in paragraph 6 of the judgment where the principle in the case of Gobald Motors (supra) has been reiterated. In this connection learned Counsel for the Insurance Company has also drawn our attention to the decision in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , particularly on paragraph 8 of the report, where it is observed that the principle in the case of Davies v. Powell was adopted, in the case of Gobald Motors (supra). It is thus submitted that principle of balancing of loss and gains, so as to arrive at a just and fair amount of compensation has been accepted by this Court as well. On behalf of the Insurance Company Hodgson v. Trapp 1988 (3) All ER 870 (HL) has been relied on in which our attention has particularly been drawn to the following observations made at All ER p. 873j-874b:

.....the basic rule is that it is the net consequential loss and expense which the Court must measure. If, in consequence of the injuries sustained, the plaintiff has enjoyed receipts to which he would not otherwise have been entitled, prima facie, those receipts are to be set against the aggregate of the plaintiff's losses and expenses in arriving at the measure of his damages. All this is elementary and has been said over and over again. To this basic rule there are, of course, certain well established, though not always precisely defined and delineated, exceptions. But the Courts are, I think, sometimes in danger, in seeking to explore the rationale of the exceptions, of forgetting that they are exceptions. It is the rule which is fundamental and axiomatic and exceptions to it which are only to be admitted on grounds which clearly justify their treatment as such.

From the above passage 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. The other observation to which our attention has been drawn at page 876 placitum "f" also does not help the contention raised on behalf of the Insurance Company for deduction of amounts in the present case. The Court was considering a situation where due to the injuries received the victim was claiming cost of care necessary in future in respect of which statutory provision, provided for attendant's allowance. It was found that the statutory benefit and the damages claimed were designed to meet the identical expenses. This is however not so, at least not shown, to be so in the case in hand.

5. The Hon^{ble} Supreme Court after taking into consideration the judgment of Hodgson (supra) took a view that deductions are admissible from the amount of compensation in a case where the claimants receives a benefit as a consequence of injuries sustained which otherwise he would not have been entitled to.

6. Similarly, in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , it was inter-alia observed as follows:-

7.....The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependants being considered separately.

7. In Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Supreme Court held as follows:-

32. 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, correlating 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.....

8. In *Jitendra Jain Vs. Rahul Parihar and Others*, , the Madhya Pradesh High Court held that the claimant, though not entitled to the amount received by him under the mediclaim policy, he was entitled to the amount of premium paid for the mediclaim policy.

9. This Court in *Udam Singh Sethi v. Tamal Das and Ors.* MAC. APP. No. 369/2006 decided by this Court on 26.10.2009, relying on *Jitendra* (supra) held that the Claimant would not be entitled to the medical expenditure which has been reimbursed to him under the mediclaim policy.

10. From the aforesaid discussion it is quite evident, that a Claimant, who has been reimbursed for the medical expenditure incurred by him (due to a motor accident) through his mediclaim policy, will not be again entitled to claim reimbursement, under the same head from the insurer of the offending vehicle, in a claim filed under the Motor Vehicles Act.

11. Applying the same principle in the present case, the Respondent No.1, cannot be benefitted twice for recovering medical expenses from both the insurer of the offending vehicle and also from his mediclaim policy. Therefore, Tribunal erred in adding a sum of Rs. 1,43,921/- in the compensation under the head of "Medical expenses" (out of the total amount of Rs. 1,71,644) which the Respondent No.1 already received from his mediclaim policy. Accordingly, the same is liable to be deducted.

12. The Respondent No.1 would have paid some premium for the mediclaim policy, but the same has not been proved on record. I would make a guess work and grant him a sum of Rs.10,000/-, as a reimbursement for the premium paid for the policy. The same shall be borne by the Appellant.

13. Therefore the total compensation is computed to be Rs. 2,17,349/- against Rs. 3,51,270/- awarded by the Tribunal.

14. The excess amount deposited with interest if any earned on the deposit shall be refunded to the Insurance Company.

15. I do not find any infirmities in the other findings of the Tribunal.

16. The Appeal is allowed in the above terms.

17. Pending applications stand disposed of.