IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1344 OF 2014

The New India Assurance Co. Ltd.,]
Sakinaka, Mumbai] .. Appellant-Original Insurer

Versus

1. Mrs. Dolly Satish Gandhi] .. Respondent-Org. Applicant
2. Mr. Janeshwar V. Pujari] .. Respondent-Org. Applicant & Opp. Party

Mr. Deelip R. Mahadik with Mr. Devendra Joshi, Advocate for the Appellant-Original Insurer.

Mr. T.J. Mendon with Mr. T.R. Kale, Mr. Deepak S. Kilaje, Mr. Navin Sheth and Mr. R.S. Alange, Advocates for Respondent No.1.

Mr. Vineet B. Naik, Senior Advocate, with Mr. Sukand Kulkarni, i/by Mr. Sarthak Diwan, Advocates for M/s. HDFC Ergo General Insurance Company Ltd.

Mr. Gautam Ankhad, Senior Advocate, Amicus Curiae, with Ms. Samridhi Lodha and Ms. Minal Thakker,

CORAM : A.S. CHANDURKAR, MILIND N. JADHAV & GAURI GODSE, JJ

The date on which the arguments concluded : 30TH JANUARY 2025.

The date on which the Judgment is pronounced : 28TH MARCH 2025.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. The question placed for consideration before this larger Bench is *"Whether the amount received by a Claimant under a Mediclaim Policy or under a Medical Insurance Policy is liable to be deducted from the amount of compensation payable to a Claimant under the head "Medical Expenses" in proceedings under Section 166 of the Motor Vehicles Act, 1988 ?"*

Decision leading to the Reference :

2. In First Appeal No.1344 of 2014 *(The New India Assurance Co. Ltd. Vs. Mrs. Dolly Satish Gandhi and Anr.)*, a challenge has been raised to the judgment of the Motor Accident Claims Tribunal, Mumbai awarding monetary compensation to the claimant. One of the grounds of challenge is that the amount awarded by the Motor Accident Claims Tribunal *(for short, "Tribunal")* towards medical expenses could not have been so awarded in view of the fact that the claimant had received these expenses under a Mediclaim Policy from the Insurance Company.

3. When the First Appeal was heard, amongst other decisions, the judgment in First Appeal No.657 of 2013 *(The New India Assurance Vs. Dineshchandra Shantilal Shah and Ors.), decided on 19th September 2013* taking the view that the amount received under a Mediclaim Policy by a claimant was liable to be deducted from the amount of compensation that was liable to be awarded towards medical expenses was relied upon by the Insurance Company. On the other hand, the claimant sought to rely upon the decisions in *Vrajesh Navnitlal Desai Vs. K. Bagyam and Anr., 2006 ACJ 65* and *Royal Sundaram Alliance Insurance Co. Ltd., Kolkata Vs. Ajit Chandrakant Rakvi and Anr., 2019(6) Mh.L.J. 386* to contend that the amount received under a Mediclaim Policy was not liable to be set-off or deducted from the amount of compensation payable under Section 166 of the Motor Vehicles Act, 1988 *(for short, "M.V. Act")*.

4. The learned Single Judge noticed the divergent views in *Vrajesh Navnitlal Desai* and *Royal Sundaram Alliance Insurance Co. Ltd. (supra)* on one hand and in *Dineshchandra Shantilal Shah and Ors. (supra)* on the other. The latter decision did not notice the earlier views on that point. Hence, by the order dated 29th June 2020, the First Appeal was directed to be placed before the Hon'ble the Chief Justice for constituting a larger Bench to decide the said question. Accordingly, the said question has been referred to the Full Bench.

Submissions on behalf of the Insurer :

5. Mr. Vineet Naik, learned Senior Advocate representing the New India Assurance Company Limited at the outset referred to the nature of various insurance policies available along with their distinct terms and conditions. Referring to Section 124 of the Indian Contract Act, 1872, it is urged that a general insurance contract operates on the principle of "indemnity" and is thus contingent in nature. It would be enforceable only when some loss occurs and if such loss has already been compensated from another source, nothing further was required to be done under the contract of indemnity. The loss thus sustained by a claimant could be claimed only once and not on multiple occasions. On being indemnified under an insurance policy, there would be no justification to again award any further amount to such insured in a claim filed under Section 166 of

the M.V. Act. He sought to differentiate between a “health insurance policy” and a “life insurance policy”. Under the provisions of Section 166 of the M.V. Act, fair and just compensation was required to be awarded to a claimant by the Tribunal on being satisfied of the entitlement of the claimant to receive compensation. While doing so, it would be necessary for the Tribunal to bear in mind the fundamental principle of insurance which was to place the insured person in a position that he / she was or would have been had the unforeseen eventuality of an accident not occurred. Under the garb of awarding just and fair compensation, the Tribunal could not proceed to award compensation under the head “medical expenses” notwithstanding the fact that the claimant as an insured had already received the amount of medical expenses under a mediclaim policy. This would amount to a wind-fall to the claimant or double compensation in such eventuality. It was submitted that there was a direct co-relation between the accident suffered by a claimant and medical expenses incurred as a result of such accident. Having received the amount of claim under a mediclaim policy, deduction of such amount from the medical expenses incurred as a result of the accident would only be justified. On medical treatment being undertaken on account of an accident suffered due to an unforeseen accident, the same would give a cause of action to a claimant to seek reimbursement of expenses incurred towards medical treatment. The option to claim such amount would not be available as against the tortfeasor and from the insurer. The learned

Senior Advocate referred to the decisions in *Helen C. Rebello and Ors. Vs. Maharashtra State Road Transport Corporation and Anr., (1999) 1 SCC 90* and *United India Insurance Co. Ltd. and Ors. Vs. Patricia Jean Mahajan and Ors., (2002) 6 SCC 281* to emphasise the principle of balancing between losses and gains while arriving at the amount of compensation that could be awarded. Inviting attention to the judgment of the Karnataka High Court in *New India Assurance Company Limited, Bangalore Vs. Manish Gupta and Anr., 2013 ACJ 2478*, it was submitted that it was rightly held that the amount paid by an insurer under a mediclaim policy was liable to be deducted from the amount of claim towards medical expenses. He also referred to the decisions of the Kerala High Court in *The National Insurance Company Ltd. Vs. Akber Badsha and Ors., 2016 ACJ 807* and *Mariamma James W/o. Late James Joseph and Ors. Vs. Alphones Antony S/o. Antony Kurian and Ors., 2016 SCC OnLine Ker 29226* to contend that the view taken therein of deducting the amount of claim granted under a mediclaim policy from the amount of compensation payable was the correct view. It was thus submitted that the question as framed ought to be answered in the affirmative by holding that the amount received by a claimant under a mediclaim policy or under medical insurance was liable to be deducted from the amount of compensation payable to a claimant under the head “medical expenses” in proceedings under Section 166 of the M.V. Act.

Submissions on behalf of the Insured :

6. On the other hand Mr. T.J. Mendon, learned counsel appearing for the claimant in the First Appeal urged that the question as framed was liable to be answered in the negative. According to him, a mediclaim policy is based on a contract between the insurer – an insurance company and the insured – the purchaser of such policy. The rights of the parties are governed by contractual terms under such policy. On a claim being made on the occurrence of an accident in the case of a mediclaim policy, the insured is entitled to the benefits of the same. Under the provisions of Section 168 of the M.V. Act, a claimant is entitled to an amount of just compensation which claim is liable to be satisfied by the insurer of the offending vehicle. Such liability is statutory in nature and it flows from the concept of a 'compulsory third party insurance policy'. The contentions raised on behalf of the insurance company was based on the provisions of Section 1A of the Fatal Accidents Act, 1855 *(for short, "FA Act")*. With enactment of the Motor Vehicles Act, initially in 1939 and thereafter the present M.V. Act, a statutory right was created in favour of a victim of a motor vehicle accident to receive just compensation. While awarding an amount of just compensation, the tort-feaster would not be entitled to get benefit of a claim amount that is received by victim of an accident pursuant to an independent contract. The statutory liability under the M.V. Act cannot be watered down on the basis of any such contractual

agreement. The learned counsel referred to the decision of the three Judge Bench of the Supreme Court in *Sebastiani Lakra and Ors. Vs. National Insurance Co. Ltd. and Anr., 2019 ACJ 34* and submitted that after considering the earlier decisions in *Helen C. Rebello, Shashi Sharma (supra)* and *Vimal Kanwar Vs. Kishore Dan, 2013 ACJ 1441 (SC)* it had been held in clear terms that amounts received by a deceased or an injured on account of contractual relations entered into were not liable to be deducted so as to defeat the statutory entitlement. He also referred to the judgment of the Division Bench of this Court in *Maharashtra State Road Transport Corporation Vs. Tulsabai Tukaram Kadave and Ors., 1990 ACJ 523* as well as the judgment of learned Single Judge in *State of Goa Vs. Michael Joaquim F.d. Souza & Ors., 2022 SCC OnLine Bom 1672* taking the view against such deduction. According to him, the view taken by learned Single Judge in *Ajit Chandrakant Rakvi, (supra)* on the same lines was the correct view. It was thus submitted that the right to receive just compensation under the provisions of the M.V. Act was statutory in nature while benefit under a mediclaim policy was payable in view of a contract entered into between the insurer and the victim. Considering the nature of liability, the amount of just compensation could not be reduced by deducting any amount received under a mediclaim policy. It was thus submitted that the question as framed be answered in the negative.

Submissions of Amicus Curiae :

7. Mr. Gautam Ankhad, learned Amicus Curiae referred to the nature of statutory liability of an insurer under the provisions of the M.V. Act vis-a-vis the nature of contractual liability under a mediclaim policy. According to him, with the repeal of the F.A. Act by virtue of enactment of the Motor Vehicles Act, 1939 followed by introduction of Section 94 therein in 1946 as well as the amendment of Section 110A in 1956, a statutory right to claim compensation was conferred on a victim of a motor vehicle accident. Such right being statutory in nature, the same could not be diluted by permitting deduction of any amount received by such victim on account of any contractual obligation under a mediclaim insurance policy. He referred to the decisions in *Helen C. Rebello* and *P Patricia Jean Mahajan (supra)* to indicate the legal principles leading to the said decisions. He invited attention to the decision in *Bradburn Vs. Great Western Rail Company, (1874-80) All England Reports 195* to submit that the right of a plaintiff to receive damages could not be affected by virtue of any amount received under an accident insurance policy. Referring to Section 168 of the M.V. Act, it was urged that the said provision being part of a welfare legislation, the same ought to be construed in favour of a claimant / victim who had suffered an accident. While satisfying a mediclaim, there is no loss caused to the insurer inasmuch as it receives premium from the insured. There is always an

option to increase the quantum of premium by virtue of the subsisting contract and there is also a provision for denying "no claim bonus" to the insured. As a result, there is no loss caused to the insurer. However, if a deduction is permitted on account of receipt of the amount of mediclaim by an insured, it would result in granting an unjust benefit to the insurer resulting in its unjust enrichment. Reliance was also placed on the decision in *Rajasthan State Road Transport Corporation Vs. Alexix Sonier and Anr. (2015) 17 SCC 758* and the judgments of learned Single Judges in *United India Insurance Company Limited Vs. Anjana Nileshkumar Parmar and Anr., 2012(3) Mh.L.J. 914, Shrikant Vs. Suryakant Uttam Gaude and Ors., 2021 All MR 25, National Insurance Company Ltd. Vs. Vaswati Samiran Ganguly and Anr., First Appeal No.368 of 2016 decided on 24th June 2019* and *Reliance General Insurance Company Ltd. Vs. Aman Sanjay Tak, 2023 SCC OnLine Bom 883* in this regard. It was thus urged that consistent with the view taken by this Court in its various decisions except the one in *Dineshchandra Shantilal Shah (Supra)*, the question as framed was liable to be answered in the negative.

Mediclaim policy, in general :

8. A mediclaim policy is broadly understood as a contractual arrangement between an insured and an insurance company as insurer. On payment of amount of premium towards a mediclaim policy, the insured is covered against health related expenses arising either due to

hospitalization on account of specified sickness or accidental injuries. A mediclaim policy is also considered as a form of investment as well as a mode of tax planning. It is in the nature of provision made towards an uncertain future. In short, it is purely a contractual agreement based on terms agreed between the insured and the insurer.

On the subject of insurances, reference can be made to the decision in *Bradburn (supra)*. Bramwell, J. has observed as under :

> "It is not worthwhile to go into it, but the subject of insurances will be found to have been thoroughly discussed a few years ago in *Dalby v. India and London Life Assurance Co. (1)* in the Court of Common Pleas. A man pays the premiums upon these accident policies upon this kind of footing, namely, that his right to all indemnity in case of an accident shall be, an equivalent for the mischief or injury that happens to him. He gets more, no doubt, if the mischief happens than all the premiums which he has paid would amount to; but he runs the chance that he will not get anything at all; and therefore it is, I say, that he ought to have this sum in addition to the damages that he may have sustained at the hands of the defendants by reason of the accident itself; for otherwise he would has a loser by insuring

against accidents in a case where the railway company was in the wrong."

JUST COMPENSATION :

9. Under Section 166(1) of the M.V. Act, a claim for compensation arising out of an accident can be made by a person who has sustained an injury or by the owner of the property or where the death has resulted from the accident, by all or any of the legal representatives of the deceased or by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased as the case may be. Under Section 168(1) of the M.V. Act, the Claims Tribunal is empowered to hold an inquiry into the claim and thereafter subject to the provisions of Section 162 of the M.V. Act, make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom such compensation shall be paid. While holding any inquiry under Section 168 of the M.V. Act, the Claims Tribunal is required to follow a summary procedure in accordance with the rules made in this behalf.

The Constitution Bench in *National Insurance Company Ltd. Vs. Pranay Shah and Ors., (2017) 16 SCC 680* while considering the provisions of Section 168 of the M.V. Act has observed as under :-

> 55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined

on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma Vs. DTC, (2009) 6 SCC 121* and it has been approved in *Reshma Kumari Vs. Madan Mohan, (2013) 9 SCC 65*. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well-accepted norm that money cannot substitute a life lost but an effort has

> to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum."

It is thus evident that the Claims Tribunal is not only empowered but is also duty-bound to award "just compensation". It is in the aforesaid backdrop that the question referred to the Full Bench requires consideration.

In the passing, reference may also made to the provisions of Section 163-A of the M.V. Act which is a special provision as to payment of compensation on a structured formula basis. Under the aforesaid provision, the claimant is not required to plead or establish that the death or permanent disablement in respect of which a claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. Schedule-II to the M.V. Act prescribes the manner in which compensation under Section 163-A is required to be adjudicated. In Item-3 thereof, general damages in case of death includes medical expenses – actual expenses incurred before death supported by bills / vouchers not exceeding as one-time payment to be Rs.15,000/-. We may only observe that in the decision in *Pranay Sethi (supra)*, it has been noted that Schedule-II to the M.V. Act has not been followed since the decision in *U.P. State Road Transport Corporation Vs.*

Trilok Chandra, (1996) 4 SCC 362. Reference is made to the aforesaid only to indicate that actual medical expenses incurred to the extent of Rs.15,000/- are admissible under Section 163-A of the M.V. Act without providing for any deduction therefrom on account of any amount received under a mediclaim policy.

CONSIDERATION OF DECISIONS OF THE SUPREME COURT

10. In *Helen C. Rebello and Ors. (supra),* a Bench of two learned Judges of the Supreme Court considered the question as to whether the life insurance money received on account of a demise of the insured was liable to be deducted from the amount of compensation that the claimants – family members were entitled to receive under the Act of 1939. After referring to various decisions including the decision in *Bradburn (supra)*, it was held that the amount of insurance is payable only on the contingency referred to in the contract and if the contingency of injury or death does not happen, the insured is the gainer as it receives more under premium than to pay on maturity of the policy. In case the contingency occurs, the claimant is the gainer as he receives the amount even before paying the full premium and the gain is to the proportion of the balance unpaid premium, whether on account of injury or death. In paragraph 35 of the said decision, it has been observed as under :-

"35. …….. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no corelation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of

> any corelation. The insured (deceased) contributes his own money fro which he receives the amount which has no corelation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

11. In *Patricia Jean Mahajan and Ors. (supra)*, after referring to the decision in *Helen C. Rebello and Ors. (supra)*, it was held that the amount received on account of social security must have a nexus or relation with the accidental injury or death, for being deductible from the amount of compensation. The amount received on account of an insurance policy of the deceased cannot be deducted from the amount of compensation though a receipt of the insurance amount was accelerated due to

premature death of the insured. This decision was also rendered by a Bench of two learned Judges.

12. In *Sebastiani Lakra and Ors. (supra)*, the aforesaid two decisions were considered by a Bench comprising of three learned Judges. After considering the provisions of Section 168 of the M. V. Act which required payment of "just compensation" to the claimants, it was held in paragraphs 12 and 13 as under :-

> "12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants / dependents are entitled to 'just compensation' under the Motor Vehicles Act for death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned, whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, shares, debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased."

From the aforesaid decisions, it is now clear that the amount received on account of insurance is due to the contractual obligations entered into by the insured with others. Having paid premium it was clear that the beneficial amount would accrue to the share of the deceased either on maturity of the policy or on death, whatever be the manner of death. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased. This is the settled position of law.

DECISIONS PERMITTING DEDUCTION OF AMOUNT RECEIVED UNDER A MEDICLAIM POLICY

13. In *Dineshchandra Shantilal Shah and Ors. (supra)*, the learned Single Judge was considering an appeal filed by the New India Assurance Company wherein the award passed by the Tribunal was under challenge. Before the Tribunal it was noted that an amount of Rs.5,14,286/- towards compensation included the amount of reimbursement that was granted under a mediclaim policy of the claimant. It was urged by the insurer that the amount received under the mediclaim policy was liable to be deducted from the total amount of compensation as the claimant had already been reimbursed the said amount. After referring to the judgment of the Delhi High Court in *National Insurance Company Ltd. Vs. R.K. Jain and Ors., 2012 SCC OnLine Del 3303 (MSE Appeal No.346/2010 decided on 2nd July 2012)* and on the basis of ratio of the decisions of the Supreme Court in *Helen C. Rebello* and *Patricia Jean Mahajan (supra)*, it was held that the amount received by the claimant under the mediclaim policy was liable to be deducted from the total amount of compensation.

In our considered opinion, a deduction of the amount received under a mediclaim policy by the claimant could not be directed to be so deducted in the light of the law laid down in *Sebastiani Lakra and Ors. (supra)* after considering the ratio of the decisions in *Helen C. Rebello* and

Patricia Jean Mahajan (supra). As held therein, the amount under a mediclaim policy is received in view of a contract entered into by the claimant with the insurance company and the same is received in view of the terms of the contract. It is thus clear that the ratio of the decision in *Dineshchandra Shantilal Shah and Ors. (supra)* does not indicate the correct legal position.

14. We may note that the Karnataka High Court in *Manish Gupta and Anr. (supra)* considered a reference made to the Division Bench as to whether the amount received under a mediclaim policy could be deducted from the total amount of compensation awarded under Section 168 of the M.V. Act. It was held that the amount received by a claimant under a mediclaim policy was required to be deducted from the total amount of compensation received by the claimant under the head "medical expenses". It was further held that if no amount was received under the mediclaim policy, the Tribunal was then required to assess the amount spent by the claimant towards medical expenses and grant such amount with respect to the bills produced. Similarly if the amount awarded under a mediclaim policy was less than the actual amount spent by the claimant towards medical expenses, the shortfall or the balance was required to be made good by the tortfeasor.

15. The Division Bench of the Kerala High Court in *Akber Badsha and Ors. (supra)* also considered a similar reference made to the Division Bench as regards permissibility of deduction of the amount received by the claimant under a mediclaim policy. After referring to various decisions including the judgment of the Karnataka High Court in *Manish Gupta and Anr. (supra)*, a similar view was taken that such deduction of the amount received under a mediclaim policy from the total amount of compensation was permissible.

In our view, in the light of the decision in *Sebastiani Lakra and Ors. (supra)*, the deduction of any amount received by a claimant under a mediclaim policy would not be permissible. We are therefore not in a position to agree with the view taken by the Karnataka High Court and the Kerala High Court in the aforesaid two decisions.

DECISIONS DISALLOWING DEDUCTION OF AMOUNT RECEIVED UNDER A MEDICLAIM POLICY

16. Various learned Single Judges have taken the view that any amount received under a medicalim policy is not liable to be deducted from the amount of compensation awarded under the head “medical expenses”. Such view as taken in *Vrajesh Navnitlal Desai*, *Ajit Chandrakant Rakvi*, *Anjana Nileshkumar Parmar*, *Vaswati Samiran Ganguly*, *Suryakant Uttam Gaude* and *Aman Sanjay Tak (supra)* is consistent with the view taken by

the Supreme Court in *Sebastiani Lakra and Ors. (supra)* that no such deduction of the amount of mediclaim from the amount of compensation awarded is permissible. It is not necessary for us to refer to various other decisions rendered by learned Single Judges that have consistently taken the view that the amount received under a mediclaim policy is not liable to be deducted from the amount of compensation awarded under Section 168 of the M.V. Act. In our view, the legal position has been correctly laid down in the aforesaid decisions of this Court.

17. We may also refer to the judgment of the Division Bench of the Calcutta High Court in *New India Assurance Company Ltd. Vs. Bimal Kumar Shah and Anr., 2019 ACJ 1532* in this regard. Dipankar Datta, J. *(as His Lordship then was)* in his concurring opinion held that what a victim gets from his mediclaim policy is the return for making payment of premiums. It is the hard-earned money that he puts in towards premium which is thereafter returned to him upon happening of an accident. The return that a victim receives from his insurer on a claim arising out of a mediclaim policy in the circumstances is consolation money. To consider such benefit as a benefit received from other sources while determining the amount of compensation would be a narrow minded approach, not intended in the best interest of the victim. He therefore observed that the money received by an accident victim as return for money invested by him ought not to be comprehended as a benefit received and therefore the

question of the victim being doubly benefited did not and could not arise. We are in respectful agreement with the aforesaid view as taken after referring to the decisions in *Helen C. Rebello* and *Patricia Jean Mahajan (supra)*.

ANSWER TO THE QUESTION REFERRED

18. In the light of the foregoing discussion, we are of the considered opinion that the question as framed ought to be answered in the negative. Thus, any amount received by a claimant under a mediclaim policy or under a medical insurance policy is not liable to be deducted from the amount of compensation payable to a claimant under the head "medical expenses" in proceedings under Section 166 of the M.V. Act.

19. Before parting, we place on record our appreciation for the valuable assistance rendered by learned counsel to the Court enabling the reference to be answered. We also acknowledge the efforts of the learned Amicus Curiae in this regard.

The First Appeal be now placed before the learned Single Judge for its consideration on merits.

[GAURI GODSE, J.] [MILIND N. JADHAV, J.] [A.S. CHANDURKAR, J.]