



C.M.A.No.3103 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

C.M.A.No.3103 of 2023

and

C.M.P.No.29307 of 2023

in

C.M.A.No.3103 of 2023

Reliance General Insurance Company Ltd.,
1st Floor, Dhanam Towers, Binny Road
Tiruppur North, Tiruppur - 641 601.

... Appellant

Vs.

1. Sathish Kumar
S/o.Murugesan

2. Ramanathan
S/o.Sundaram

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the judgment and decree dated 20.04.2022 passed in M.C.O.P.No.1719 of 2019 on the file of MACT (Special Court), Tiruppur.

Page Nos.1/13



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C.M.A.No.3103 of 2023

For Petitioner : Mr.R.Suresh Srinivasan

J U D G M E N T

[Judgment of the Court was made by M.SUNDAR, J.,]

Captioned main 'Civil Miscellaneous Appeal' [hereinafter 'CMA' for the sake of brevity] has been filed in this Court on 22.08.2023.

2. Captioned CMA is a Statutory Appeal under Section 173 of 'the Motor Vehicles Act, 1988' [hereinafter 'MV Act' for the sake of brevity] and it has been filed assailing an award dated 20.04.2022 made in M.C.O.P.No.1719 of 2019 on the file of the Motor Accident Claims Tribunal (Special Court, Tiruppur). This '20.04.2022 award' shall be referred to as 'impugned award' and 'the Motor Accident Claims Tribunal (Special Court, Tiruppur)' shall be referred to as 'said MACT', both for the sake of convenience and clarity. To be noted, 'MACT' is an abbreviation for 'Motor Accident Claims Tribunal'.



C.M.A.No.3103 of 2023

WEB COPY 3. Captioned CMA is in the Admission Board and Mr.P.Suresh Srinivasan, learned counsel on record for the appellant - Insurance Company is before us.

4. Short facts are that a road accident which resulted in 80% disability for the claimant happened on 26.09.2019 when the claimant was pillion riding a two wheeler (two wheeler bearing registration No.TN 42 U 8932) in Darapuram-Udumalai Road and accident occurred at Thalavaipattinam Kootupuli Bridge, when the claimant's two wheeler was proceeding from South to the North on the left hand side of the road. A truck (lorry) bearing registration No.TN 67 AB 2344 coming in the opposite direction (according to the case file before us was driven in a rash and negligent manner) resulting in collision with the two wheeler, which in turn resulted in 80% disability to the claimant as alluded to supra.

5. This Court having set out short facts shorn of granularity i.e., short facts imperative for appreciating this Admission Board order, now proceeds



C.M.A.No.3103 of 2023

to capture what unfurled in the hearing.

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6. This Court, after hearing Mr.P.Suresh Srinivasan, learned counsel for appellant - Insurance Company and after perusing the case file before us, is of the considered view that the captioned CMA deserves to be dismissed and reasons i.e., dispositive reasoning, will be set out elsewhere infra in this order. To be noted, while setting out the reasons i.e., dispositive reasoning, we shall be capturing the points urged by the learned counsel, our discussions on the same and set out dispositive reasoning.

7. Two points for determination arise in this appeal and they are:

(a) Whether said MACT fell in error in fixing monthly income of the claimant at 14,500 INR?

(b) Whether said MACT was correct in appreciating Ex.C1 - Disability Certificate as regards 80% disability while (according to learned counsel for appellant - Insurance Company) impugned award talks about 90%?



C.M.A.No.3103 of 2023

WEB COPY The above points for determination arise owing to twofold attack qua impugned award which is captured infra in this order in paragraphs to follow.

8. Notwithstanding very many grounds in the memorandum of grounds of appeal, learned counsel very fairly submitted that the appeal is restricted to quantum (not liability). Learned counsel raised two points. The two points, our discussion and dispositive reasoning on the same are as follows:

(i) Learned counsel submitted that said MACT vide impugned award erred in fixing monthly income of the claimant (to be noted, claimant is a sculptor) at 14,500 INR. Learned counsel submitted that there is no documentary evidence in this regard and it is just a case of approximation by said MACT. We carefully perused the impugned award. We find from paragraph No.13 {captioned 'வருமானம்' (Income)} of the impugned award that learned Presiding Officer of said



C.M.A.No.3103 of 2023

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MACT has arrived at 14,500 INR per month by discussing and appreciating (negating) oral evidence (deposition) before said MACT. This has been clearly articulated in the impugned award that the evidence of PW1 (claimant) and PW2 (Eye witness) *ipse dixit* cannot be the basis for fixing the monthly income of the claimant. On the contrary, said MACT has proceeded on the basis of approximation qua the averment of claimant and paragraph No.13 of the impugned award reads as follows:

'13. வருமானம்

மனுதாரர் விபத்திற்கு முன் சிற்ப வேலை செய்து மாதம் ரூ.20,000/- சம்பாதித்து வந்தார் என்று மனுவிலும், ம.சா.1. மா.சா.2 சாட்சியத்திலும் கூறப்பட்டுள்ளது. ஆனால், அதனை உறுதியூட்டக்கூடிய ஆவணங்களை தாக்கல் செய்யவில்லை. எனவே ம.சா.1. மா.சா.2ன் சாட்சியம் மனுதாரரின் வருமானத்தை நிரூபிக்கும் வகையில் தொடர்புடையதாக இல்லை என்று தீர்மானிக்கப்படுகிறது. சிற்ப வேலை செய்பவர்களுக்கு வருமானத்தை மெய்ப்பிக்க ஆவணங்கள் இருக்க வாய்ப்பில்லை. ஆவணங்கள் இல்லை என்பதாலேயே ஒரு நபர் சம்பாதிக்கவில்லை



C.M.A.No.3103 of 2023

என்றும் தீர்மானிக்க இயலாது. மனுதாரர் சம்பாதிக்க இயலாத நிலையில் இருந்தார் என்று 2ம் எதிர்மனுதாரர் தரப்பில் மெய்ப்பிக்கவில்லை. விபத்து 26.09.2019 ஆண்டு நடந்துள்ளது. சாதாரண வேலை செய்பவர் கூட மாதம் ரூ.14,500./ சம்பாதிக்க இயலும் எனவே மனுதாரரின் தோராய மாத வருமானம் ரூ.14,500/- என்று தீர்மானிக்கப்படுகிறது.

மாண்புமிகு இந்திய உச்ச நீதிமன்றம் நேஷனல் இன்சூரன்ஸ் கம்பெனி லிமிடெட் பிரனாய் சேத்தி 2017 (2) TN MAC 609 (SC) வழங்கிய வழிகாட்டு தீர்ப்பின் அடிப்படையில் தோராயமாத வருமானத்தில் 40% (ரூ.5,800/-) எதிர்கால வாய்ப்பிற்காக வழங்கலாம் என்றும் தீர்மானிக்கப்படுகிறது.'

A perusal of the aforementioned paragraph No.13 of the impugned award makes it clear that claim of the claimant that his monthly income is Rs.20,000/- has not been subjected to (wholly) successful disputation or contestation. In this view of the matter, learned Presiding Officer of said MACT applied *Pranay Sethi* principle [*National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680]. To be noted, said MACT has relied on *Pranay*



C.M.A.No.3103 of 2023

WEB COPY

Sethi case as reported in **2017 (2) TN MAC 609 (SC)**. It is also to be noted, that paragraph No.42 of **Sarla Verma** case [**Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**] has been sustained in **Pranay Sethi** case though **Sarla Verma** case has been partly overruled in **Pranay Sethi**. Therefore, we have no hesitation in saying that said MACT has adopted the correct approach, applied the principles of law laid down by Hon'ble Supreme Court correctly and there is nothing to demonstrate that there is infirmity, much less infirmity that is good enough to interfere or dislodge the impugned award.

(ii) We move on to the next point urged by learned counsel for appellant - Insurance Company. Learned counsel submitted that the Disability Certificate (அரசு மருத்துவக் குழு வழங்கிய ஊன சான்றிதழ்) which has been marked as Ex.C1 talks about 80% disability but said MACT has taken 90% disability as the basis for making the impugned award. In this regard, learned counsel drew our attention to a portion of



C.M.A.No.3103 of 2023

paragraph No.11 of the impugned award which reads as follows:

'11..... எனவே மனுதாரருக்கு வழங்கப்பட்ட 80 சதவிகித நிரந்தர ஊனம் சரியானதுதான் என்றும், மனுதாரருக்கு ஏற்பட்ட காயத்தினால் அவருக்கு 90% செயல் திறன் குறைபாடு ஏற்பட்டுள்ளது என்றும் இத்தீர்ப்பாயம் தீர்மானிக்கிறது.....'

A careful perusal of the aforementioned portion as well as the other parts of the impugned award makes it clear that said MACT has correctly noticed that the Disability Certificate talks about 80% disability but the functional shortcoming (only loss of earning capacity owing to disability) only has been fixed at 90%. Disability has not been fixed at 80%. Learned Presiding Officer of said MACT has appreciated Ex.C1 - Disability Certificate evidence and post appreciation of evidence has arrived at the inference that the functional disability (loss of earning capacity owing to 80% disability) is 90%. In this



C.M.A.No.3103 of 2023

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regard, we remind ourselves of **Raj Kumar's** case being **Raj Kumar Vs. Ajay Kumar** reported in (2011) 1 SCC 343 as Hon'ble Supreme Court sets out three different facets of disability.

(a) Where a person suffering disability cannot continue to do the work which he was doing until then;

(b) Where a person can continue to work but in a different function and;

(c) Where a person can continue but to a lesser extent.

9. This Court, having set out discussion and dispositive reasoning qua points urged by learned counsel for appellant - Insurance Company adds that it is noticed that the age of the claimant was 35 on the date of the accident (26.09.2019) which means he would now be 39. The prospects for this (now) 39 year old claimant is bleak i.e., as bleak as one can imagine considering that he was a sculptor. In this view of the matter, we notice that the claimant has claimed Rs.60 Lakhs and said MACT has awarded a little over Rs.49.82 Lakhs (Rs.49,82,170/- to be precise). It may not be necessary



C.M.A.No.3103 of 2023

to dilate on the other heads under which the claim has been acceded to as the same are not in the realm of twofold challenge and as the two points (notwithstanding other grounds in the memorandum of grounds of appeal) urged before us fail and we also notice that the appellant-Insurance Company is not on liability and it is only on quantum.

10. Ergo, the sequitur is, captioned CMA fails and the same is dismissed. Consequently, captioned CMP is also dismissed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
03.01.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No

mk

To

1. The Presiding Officer
Motor Accident Claims Tribunal (Special Court)
Tiruppur.
2. The Section Officer

Page Nos.11/13



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V.R.Section
High Court, Madras.



C.M.A.No.3103 of 2023

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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C.M.A.No.3103 of 2023



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C.M.A.No.3103 of 2023

03.01.2024