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C.M.A.No.3117 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

C.M.A.No.3117 of 2023

and

C.M.P.No.29475 of 2023

in

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The Manager
Reliance Gen. Ins. Co. Ltd.,
Door No.12H, 2035, 15th Main Road, H Block
4th Street Road, Anna Nagar East,
Chennai-600 101.

... Appellant

Vs.

1. Mrs.Sagunthala
W/o.Late M.B.Mani Prasad
2. N.Sivashankar
S/o.Natarajan

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and judgment dated 18.02.2023 passed in M.C.O.P.No.121 of 2021 by the Hon'ble Motor Accident Claims Tribunal, Special District Court at Tiruvallur.

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For Petitioner : Ms.C.Bhuvanasundari

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 04.08.2023.

2. Captioned CMA is a Statutory Appeal under Section 173 of 'the Motor Vehicles Act, 1988' [hereinafter 'MV Act' for the sake of brevity].

3. Short facts (shorn of granularity) i.e., facts imperative for appreciating this order are that there was a road accident on 29.04.2021 at about 9.45 a.m. in Tiruvallur Road off Chennai; that one Mani Prasad was riding a two wheeler (Honda Activa) bearing registration No.TN-12-H-2381 and was riding towards Tiruvallur; that the two wheeler was hit by a truck bearing registration No.TN-30-V-0477 somewhere near Sevvapet petrol bunk in Tiruvallur; that one Thiru.N.Sivashankar, son of Thiru.Natarajan



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(second respondent before this Court) is the owner and driver of the said truck; that Mani Prasad sustained serious injuries i.e., head injury, injury to back bone, left hand and he died on the spot; that wife of Mani Prasad one Ms.Sagunthala filed a claim *inter alia* under Section 166 of MV Act before 'the Motor Accident Claims Tribunal No.I, Special District Court, Tiruvallur' [hereinafter 'said MACT' for the sake of convenience and clarity] and it is to be noted, 'MACT' is an abbreviation of 'Motor Accident Claims Tribunal'; that 'Ms.Sagunthala' shall hereinafter be referred to as 'claimant' for the sake of convenience; that the claimant sought an award of Rs.1.25 Crores; that said MACT, after full contest, on the basis of documentary and oral evidence before it passed an award dated 18.02.2023 awarding a little over Rs.35 Lakhs (Rs.35,00,090/- to be precise); that the Insurance Company which had insured the truck bearing registration No. TN-30-V-0477 owned and driven by N.Sivashankar on the fateful day (second respondent before this Court as alluded earlier in this narrative and it is to be noted that this N.Sivashankar was the first respondent before said MACT) has filed the captioned Statutory appeal i.e., CMA assailing the same on quantum.

4. In the Admission Board today, Ms.C.Bhuvanasundari, learned



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counsel for appellant - Insurance Company, notwithstanding very many points that have been articulated in the Memorandum of Grounds of Appeal predicated her campaign against the impugned award of said MACT on two points and the two points are as follows:

(i) Said MACT has added 15% of actual salary towards future prospects but it should be only 10% as the deceased was 54 years old on the date of the accident (Date of Birth of the deceased is 10.05.1966) and was on a fixed salary;

(2) As regards actual salary, said MACT has not taken the same by computing actual salary 'less tax'. In other words, the income tax deduction / income tax component has not been subtracted while fixing actual salary is learned counsel's say.

5. In the light of the aforementioned argument, it is clear that the captioned CMA is only on quantum (not on liability) and the points for determination are as follows:

(i) Whether said MACT was correct in adding 15% of actual salary to the income of the deceased towards future



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prospects;

(ii) Whether said MACT had erred in by not deducting the income tax component while arriving at actual salary.

6. In the light of the narrative thus far, we carefully considered the two points urged by the learned counsel for appellant - Insurance Company, we perused the case file before us and we are of the considered view that the captioned CMA deserves to be dismissed. The discussion and dispositive reasoning for our decision to dismiss the captioned CMA are as follows:

(i) The first point (as alluded to / captured supra) urged by the learned counsel for appellant - Insurance Company is that said MACT fell in error in adding 15% of actual salary to the income of the deceased towards future prospects as according to learned counsel for appellant - Insurance Company, deceased was on a fixed salary and it should have only been 10%. In testing this argument, we deem it appropriate to respectfully rely on authoritative pronouncement of Hon'ble Supreme Court in this regard vide ***Pranay Sethi*** case



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[National Insurance Company Limited Vs. Pranay Sethi and

others reported in (2017) 16 SCC 680]. Paragraph Nos.59.3

and 59.4 of **Pranay Sethi** case are relevant and the same read

as follows:

'59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.'



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From a careful perusal of aforementioned paragraph Nos.59.3 and 59.4 of ***Pranay Sethi*** case, it is clear that for computation of future prospects for a person, who is between 50 and 60 years of age, it should be 15% of actual salary if the person had a permanent job and it should be 10% if a person was either self-employed or on a fixed salary. In the case on hand, the question is, whether the deceased Mani Prasad was on a permanent job or as to whether he was on a fixed salary. In this regard, the appreciation of evidence by said MACT which has been articulated in paragraph No.9.2 of the impugned award (paragraph No.9.2 captioned 'Loss of Monthly Income of the deceased') is relevant and the same reads as follows:

'9.2. Loss of Monthly income of the deceased :-

According to the petitioner, the deceased was a Salesman at Instrument and Chemicals Pvt. Ltd., Company, Egmore, Chennai and earning Rs.58,600/- per month. The petitioner to substantiate the same summoned the official from above said company examined him as PW2. The Manager of the said company produced Authorization letter issued by Head



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Accountant of their company in Ex.P8 and would depose that their company is not in the habit of issuing any Identity card for its employees and as such, for the summons issued to produce Identity card and Appointment letter along with six months salary slip, he had produced Report issued by their Branch Manager regarding employment of deceased Mani Prasad in their company as Ex.P9 along with six months' Salary statement for the period from October 2020 to March 2021 in Ex.P10. He would state that from September 1994 Mani Prasad was working as Sales Executive in their company until his demise and that his salary would be directly credited to his bank account and Ex.P10. Salary statement would show the tax deducted and his Gross income was Rs.58,600/-. On the side of the 2nd respondent Insurance Company it was elicited from PW2 Shankar that their company manufactures Bio-Chemical products at Ambala and the same is being distributed from their branch office and that deceased Mani Prasad was sales executive and permanent employee of their company with retirement at the age of 58 years. PW2 Shankar admitted that after death of Mani Prasad, his wife is receiving family pension at the rate of Rs.3,500/- per month on the basis of 3.67% in the basic salary. He would state that from October 2020 to



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*December 2020 since it was Covid lock down they did not deduct tax and before October 2020 only consolidated salary was being paid to him. Ex.P10 Salary statement would cause to show that in the month of March 2021 the last month of salary given to deceased Mani Prasad before this death on 29.04.2021 is Basic pay of Rs.14,000/- and HRA (House Rent Allowance) Rs.17,500 and CCA (City Compensatory Allowance) Rs.17,100 and Conveyance Rs.10,000/-. The deductions were made towards EPF, Pension Fund and TDS totally to the tune of Rs.3680/-. It is the contention on the side of the 2nd respondent insurance company that the petitioner is not entitled for the conveyance charges of Rs.10000/- and for the same would rely upon decision reported in **The Hon'ble High Court of Madras 2022 (2) TNMAC 685 (DB) New India Insurance Co. Ltd., Vs. Manimekalai and others** wherein the Hon'ble High Court while taking into consideration the monthly salary of deceased has not taken into account Provident Fund, TDS and conveyance charges. This Tribunal relying upon the same is inclined to take only Basic Pay, HRA and CCA to the tune of Rs.14000 + Rs.17500 + Rs.17100 = Rs.48,600/- per month. Further PW2 Shankar the Manager of the company in which deceased was*



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employed having admitted that after his demise his wife is receiving family pension of Rs.3500/- per month and the same is credited to her bank account, this Tribunal in the absence of any contradictory evidence on the side of the petitioner with regard to the same is inclined to deduct Rs.3500/- from the above arrived monthly income of Rs.48600/-. Hence, this Tribunal safely concludes that the monthly income of the deceased is Rs.45,100/-.'

***Underlining made by this Court for ease of reference
and for supplying emphasis.***

Aforementioned paragraph No.9.2 of the impugned award of said MACT speaks for itself and it is very clear that income of the deceased has been fixed at Rs.45,100/- per month after taking into account the fact that his gross income was Rs.58,600/- and salary was being credited directly into his bank account of the deceased after deduction of tax vide underlined portion in paragraph No.9.2 of the impugned award extracted and reproduced supra. Therefore, the first point that the income tax component has not been deducted for arriving at actual



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salary fails. This is more so, as there is nothing to demonstrate that there is anything perverse in appreciation of evidence. In this regard, it is also to be noted that the claimant herself deposed as P.W.1 and one Mr.Sankar, Manager of the company in which the deceased was employed was examined as P.W.2.

(ii) This takes this Court to the second point that has been urged by the learned counsel for the appellant - Insurance Company. This second point turns on addition of 15% of actual salary to the income of the deceased towards future prospects. As already alluded to supra, in the points for determination, 15% addition would happen if the deceased was in a permanent job and the question or in other words, the bone of the contention if at all and if that be so, is as to whether the deceased was in a permanent job or in a fixed salary. We find that if it is a case of a fixed salary, it should be consolidated remuneration and payee may have to file returns but in the case on hand, from paragraph No.9.2 of the impugned award which



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is based on appreciation of oral and documentary evidence before said MACT, it is clear that it is not a case of fixed salary and it is a case of permanent employment wherein, the salary was being credited in the bank account of the deceased directly by the employer after making deductions including tax deductions. Therefore, there is no difficulty in coming to the conclusion that in the case on hand, the deceased was in a permanent job and this means that paragraph No.59.3 (not paragraph No.59.4) of ***Pranay Sethi*** case would apply. This means that the second point urged by the learned counsel for appellant - Insurance Company also does not cut ice with us. This takes us to the two points for determination. To be noted, the two points for determination pertain to not deducting income tax component and addition of 15% instead of 10%.

7. In the light of the narrative, discussion and dispositive reasoning supra, it is clear that both the points for determination stand answered against the appellant. This means that the appeal cannot but be failed.



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8. This Court also finds that in a fatal accident as against a claim of Rs.1.25 Crores vide a beneficial legislation i.e., MV Act, the dependent spouse of the deceased has been awarded a little over Rs.35 Lakhs (Rs.35,00,090/- to be precise). In this generic view of the matter also, we find that this is not a fit case for interference qua impugned award made by said MACT.

9. In the light of the narrative, discussion and dispositive reasoning thus far, captioned CMA fails and the same is dismissed. Consequently, captioned CMP also perishes with the captioned CMA and the same is also dismissed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

04.01.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

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2.

Motor Accident Claims Tribunal No.I,
Special District Court
Tiruvallur.
The Section Officer
V.R.Section
High Court, Madras.



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

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