



C.M.A.No.2 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.2 of 2024

and

C.M.P.No.9 of 2024

in

C.M.A.No.2 of 2024

National Insurance Company Limited
Divisional Office – 11
Trichy and at
State Bank Road, Coimbatore

... Appellant

Vs.

1.R.Bettaiyan
Son of Ramaiya Gowder

2. Smt.B.Suseela
Wife of Bettaiyan

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and judgment passed in M.A.C.T O.P.No.920 of 2019 dated 30.03.2023 on the file of the Motor Accidents Claims Tribunal, 3rd Additional District Court, Coimbatore.

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For Appellant : Ms.N.B.Surekha

For Respondents : Mr.C.Veeraraghavan

J U D G M E N T

[Order 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 30.10.2023.

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 elaboration and particulars not imperative for appreciating this order] are that a young veterinary doctor i.e., Dr.B.Karthik was riding a two wheeler on 21.02.2019 at about 11.30pm in the night near Thiyyaga Perumanallur, Vilamal Bus Stand in Tiruvarur District; that the 28 year old young veterinary doctor was riding a motor cycle bearing registration No.TN 40 Q 3666; that a truck bearing registration No.TN 49



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AB 1454 coming in the opposite direction and driven by one A.Loganathan, first respondent before 'Motor Accident Claims Tribunal' i.e., 'MACT' for the sake of brevity and third respondent before this Court collided with the two wheeler and Dr.Karthik sustained severe injuries; that he was rushed to Tiruvarur Government Medical Hospital; that he unfortunately died the next day i.e., he succumbed to the injuries; that pertaining to this road accident, Tiruvarur police registered a case against A.Loganathan vide Crime No.79 of 2019, initially under Sections 279 and 337 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and it was later altered to Sections 279 and 304 (A) of IPC; that father and mother of late Dr.Karthik arraying themselves as 1st and 2nd claimants respectively filed a claim *inter alia* under Section 166 (1)(c) of MV Act seeking compensation of one crore; that this claim was filed in III Additional District Court, Coimbatore which shall hereinafter be referred to as 'said MACT' for the sake of brevity. This claim is vide M.C.O.P.No.920 of 2019 on the file of said MACT; that in said MACT, driver of the truck A.Loganathan was arrayed as first respondent and the Insurance Company which had insured the truck was arrayed as third respondent; that after full



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contest, said MACT in and by an 'award dated 30.03.2023 in M.C.O.P.No.920 of 2019' [hereinafter 'impugned award' for the sake of brevity, convenience and clarity] awarded a compensation of a little over 56 lakhs [56,16,900 INR to be precise] as against one Crore claim; that Insurance company [third respondent before said MACT] is in appeal before us.

4. Ms.N.B.Surekha, learned counsel on record for the appellant Insurance Company [to be noted, captioned CMA is listed in the Admission Board today] notwithstanding very many grounds raised in the memorandum of grounds of appeal, predicated her campaign against the impugned award on the following points:

i) deceased Late Karthik was under the influence of alcohol at the time of road accident and therefore, said MACT ought not to have granted compensation;

ii) a rough sketch depicting the accident was marked as Ex.P5 before said MACT and this rough sketch shows that the truck did not err but late Dr.Karthik had erred by riding on the wrong side of the road;



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iii) said MACT fell in error in fixing the monthly salary of

WEB COPY Late Dr.Karthik at Rs.40,000/-.

5. Before we proceed further, it is to be noted that Mr.C.Veeraraghavan, learned counsel for the claimants / Respondents 1 and 2 is before us on the 'videoconferencing' ['VC' for the sake of brevity] platform. It is also to be noted that Ms.N.B.Surekha, learned counsel for appellant Insurance Company is in physical court. It is further to be noted that this is a hybrid hearing which is a daily / routine feature in this Court.

6. While Mr.C.Veeraraghavan, learned counsel submitted that he had lodged a caveat, learned counsel for appellant Insurance Company submitted that caveat had not been lodged and that Mr.C.Veeraraghavan, learned counsel had only appeared at the pre-numbering stage of captioned CMA (in condonation of delay in filing petition). Mr.Veeraraghavan, learned counsel is unable to give the caveat number readily but it is not necessary to go into this controversy in the light of the view we are taking in the Admission Board. Suffice to record that Mr.Veeraraghavan, learned counsel submits, on instructions, that claimants have not filed any appeal assailing the impugned award. To be noted, as captioned matter is in



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Admission Board appearance of Mr.Veeraraghavan is noted for this limited purpose. In the light of the points raised by learned counsel for appellant Insurance Company in her campaign against the impugned award [captured elsewhere supra in this order], the following points for consideration arise:

- i) Whether the version that deceased was under the influence of alcohol at the time of the accident was proved before said MACT?;
- ii) Whether Late Dr.Karthik was riding the two wheeler on the wrong side of the road and as to whether this is evident from Ex.P5?;
- iii) Whether said MACT fell in error in fixing monthly income of deceased Dr.Karthik at Rs.40,000/- per month?

7. This Court carefully considered the submissions made by learned counsel for the appellant Insurance Company, perused the case file, this Court comes to the conclusion and that captioned CMA does not pass muster in the Admission Board, therefore captioned CMA deserves to be dismissed and the reasons are set out infra.



8. Before setting out the reasons infra, we make it clear that we shall be setting out the points urged, discussion on the same and our dispositive reasoning together in the reasons infra and an adumbration of the same is as follows:

i) The first point urged is that the deceased Dr.Karthik was under the influence of alcohol. Learned counsel strenuously urged that a person, who is riding a two wheeler under the influence of alcohol and/or his dependent [parents in this case, who are claimants before MACT] should not be given the benefit of an award under the MV Act. Learned counsel in support of her contention pointed out that the postmortem was done 16 hours later and a blood sample had not been taken forthwith. We carefully considered the case file. We find that paragraph 9 of the impugned award is a clincher in this regard as the same reads as follows:

'9. In this case, it is important to note that as per Ex.R2 Karthik was unconscious. It is also reported that he was having head injury. He might be unconscious due to head injury. This circumstance is not ruled out by proper medical evidence. And no blood test report is



available to show the quantity of Alcohol present in the blood at the time of accident. Under these circumstances, this tribunal is not inclined to accept the version of the 3rd respondent that the accident happened as two wheeler was driven by Karthik under the influence of Alcohol.'

(double underlining made by this Court for the sake of ease of reference)

In this regard the preceding paragraph in the impugned award i.e., paragraph 8 is also relevant and the same reads as follows:

'8) Any how, RW1 the 1st respondent has deposed that Karthik was under the influence of alcohol and he did not wear helmet. RW2 the Medical records officer of Tiruvarur, Medical College Hospital on summons has produced the accident register copy of Karthik dated 22.02.2019. He has deposed that as per the same Karthik was under the influence of alcohol. But during his cross examination he was shown Ex.P9 which is the postmortem certificate of Karthik and he has admitted that it does not disclose the presence of alcohol in his stomach at the time of dissection. The postmortem as per Ex.P9 was conducted on 22.02.2013 at about 4.00pm, hardly 14 hours after accident. If Karthik was under the influence of alcohol as stated in Ex.R2 the copy of accident register then the presence of alcohol would have been noted in the



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postmortem certificate. Further, consumption of alcohol and under the influence of alcohol are two different circumstances.'

Said MACT i.e., learned District Judge presiding over said MACT, on appreciation of evidence before her, has come to the conclusion that the possibility of the deceased having become unconscious due to head injury had not been ruled out (on appreciation of evidence). Said MACT has also noticed that Ex.P9-Postmortem Certificate of Dr.Karthik on which the Medical Records Officer of Tiruvarur Medical College Hospital deposed during cross-examination that the Postmortem Certificate [Ex.P9] does not disclose the presence of alcohol in his stomach at the time of dissection. This is captured in paragraph 8 of the impugned award which has been extracted and reproduced supra. A MACT can only go by the records and evidence [evidence in the form of deposition of witnesses and exhibits marked] and return a finding. In the case on hand, we find that there is nothing to show perversity qua appreciation of evidence in this regard. Be that as it may, said MACT has come to the conclusion that the possibility of



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Late Dr.Karthik having become unconscious due to head injury had not been ruled out by way of proper medical evidence and therefore, the benefit of doubt has been given to the claimants in making the impugned award. We remind ourselves that Section 166 of MV Act is a provision which falls under the category of beneficial legislation and the broad principle that a beneficial legislation has to be benevolently and liberally construed. Therefore, we find no error in MACT i.e., learned presiding Officer of said MACT having given the benefit of doubt to the claimants.

ii). This takes us to the next point that has been urged. The next point is that the rough sketch shows that late Dr.Karthik was riding the two wheeler on the wrong side of the road. Learned counsel submitted that Ex.P5 would amply demonstrate this. This Court wanted to know whether this plea had been taken before said MACT. In response to our query, learned counsel for appellant Insurance Company drew our attention to one paragraph in counter affidavit of Insurance Company filed before said MACT.



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Intriguingly, two paragraphs have been given Paragraph No.11 but learned counsel drew our attention to first of the two paragraphs assigned No.11 and the same reads as follows:

'11. The accident is only due to the negligence of the deceased Karthick, who drove his two wheeler under the influence of alcohol and without wearing the helmet. The deceased driven the two-wheeler negligently and invited the accident. The contrary allegations are invented for the purpose of this case.'

A careful perusal of the aforementioned paragraph 11 makes it clear that the Insurance Company has only raised the point that deceased was under the influence of alcohol at the time of accident and the point that late Dr.Karthik was allegedly riding on the wrong side of the road has not been raised. This point (point that deceased was under the influence of alcohol) has already been discussed and our dispositive reasoning has been set out while dealing with the previous point supra. Therefore, that by itself is good enough to say that the second point does not cut ice with us.

iii). This takes this Court to the third point i.e., quantum of monthly salary fixed for Dr.Karthik. Learned counsel for appellant



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Insurance Company submitted that Late Dr.Karthik was in a temporary employment and that his salary ought not to have been taken as Rs.40,000/- per month. In this regard, we carefully perused the impugned award and find that Paragraphs 13 and 14 of the impugned award deal with monthly salary and the same read as follows:

*'13. The petitioners claim that the deceased was working as a Veterinary Assistant Surgeon in Government Veterinary Dispensary, Peralam, Thiruvavarur District and he was earning Rs.40,000/- per month. The petitioners have produced Ex.P21 to prove his income and employment. Ex.P21 is the appointment order issued by Animal Husbandry & Veterinary Services, Chennai on 07.11.2018. As per Ex.P21 his salary was Rs.40,000/-. This accident happened on 21.02.2019. Ex.P13 is the certificate of Registration of Karthik issued by Tamil Nadu Veterinary Council. Ex.P13 shows that his date of birth is 11.01.1991. And so, on the date of accident i.e., on 21.02.2019, his age was 28 years. The multiplier for calculating loss of dependency as per **Sarala Verma Vs.Delhi Transport Corportation** is 17. The Future prospectus of the deceased is taken as 50% of his income in terms of the law laid down in **National Insurance Vs. Pranay Sethi**. The deceased being*



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a bachelor $\frac{1}{2}$ of his income is deducted towards his personal expenses. If it is so, Rs.40,000/- + Rs.20,000/- (50% of 40,000)= Rs.60,000, $\frac{1}{2}$ of Rs.60,000= Rs.30,000/-, Rs.60,000/- - Rs.30,000/- = Rs.30,000/-, Rs.30,000/- x 12 x 17 = Rs.61,20,000/-. This amount is arrived as compensation for loss of dependency.

14. As per the law laid down in **Magma General Insurance .Vs.Nanuram @ Chuhruram** dated 18.09.2018, **New India Assurance Company Limited Vs.Somwati**. The petitioners are entitled to compensation for loss of filial consortium as parents. Rs.40,000/- as per **National Insurance Company .vs.Pranay Sethi** is to be awarded as compensation in this head. Any how, as per the above ruling this amount is to be enhanced at the rate of 10% in every 3 years. The **National Insurance Company .vs.Pranay Sethi** judgment was delivered on 31.10.2017. Now three years have passed. So 10% is to be enhanced while awarding compensation for loss of consortium. If it is so that 10% comes to Rs.4000/- if the same is added to Rs.40,000/- it comes to Rs.44,000/-. This amount is awarded as compensation for loss of filial consortium to the petitioners 1 and 2. Thus in total the petitioners are awarded Rs.88,000/- as compensation for loss of filial consortium.'

A careful perusal of the above shows that said MACT has *inter alia* proceeded on the basis of **Pranay Sethi** principle. We find that only



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the date of **Pranay Sethi** judgment i.e., 31.10.2017 has been given in the impugned award. Therefore, we deem it appropriate to write that **Pranay Sethi** rendered on 31.10.2017 by a Constitution Bench of Hon'ble Supreme Court is reported in **(2017) 16 SCC 680**. Paragraph 59 of **Pranay Sethi** (paragraphs as in the SCC report) is the summation of the conclusions and as regards salary. Paragraphs 59.3 and 59.4 are relevant, which 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



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established income means the income minus the tax component.'

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Considering that Rs.40,000/- per month has been arrived at by appreciating evidence i.e., Ex.P21 which is a copy of the appointment letter of Late Dr.Karthik issued by the Animal Husbandry and Veterinary Services, Chennai [Appointment letter dated 07.11.2018], we find that the appellant is unable to point out any infirmity much less demonstrate that the finding rendered by said MACT is contrary to the declaration of law made by Hon'ble Supreme Court in ***Pranay Sethi***.

9. The narrative discussion and dispositive reasoning thus far is an adumbration of reasons for our conclusion which we have already set out supra elsewhere. To be noted, the conclusion is that CMA does not pass muster in the Admission Board and it deserves to be dismissed.

10. All the three points urged by the appellant Insurance Company have been set out by us in the narrative, discussion and dispositive reasoning supra. The three points for determination narrated by us supra also stands answered against the appellant. This Court also notices that in a



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fatal accident where a young 28 years old veterinary doctor died, father and mother who were 58 and 49 years of age at the time of filing of claim before said MACT [claim was filed before said MACT on 30.04.2019] have been awarded a sum of a little over Rs.56.16 lakhs in all [56,16,900 INR to be precise]. It is also to be noted that father and mother i.e., parents of the deceased young veterinary doctor would now be 62 years and 53 years of age respectively.

Apropos, the sequitur is captioned CMA fails and the same is dismissed. Consequently captioned Civil Miscellaneous Petition is also dismissed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

08.01.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

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1. The Presiding Officer
Motor Accident Claims Tribunal (Special Court)
3rd Additional District Court, Coimbatore
2. 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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