



WEB COPY

C.M.A.No.18 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.18 of 2024

and

C.M.P.No.150 of 2024

in

C.M.A.No.18 of 2024

The Oriental Insurance Company Limited
Rep. by its Manager
No.144, Prakasam Salai
Broadway,
Chennai-108.

... Appellant

Vs.

1. G.Baskaran
S/o.Govindaraju
2. B.Kavi Priya
D/o.G.Baskaran
3. Minor B.Sunderesan
S/o.G.Baskaran
4. S.Nagaraj
S/o.Selvam

.. Respondents



C.M.A.No.18 of 2024

WEB COPY

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and judgment passed by the Motor Accident Claims Tribunal-III, Additional District and Sessions Court, Tiruvallur at Poonamallee in M.C.O.P.No.1083 of 2013 dated 29.11.2022.

For Petitioner : Mr.S.Senthilkumar
For Respondents : Mr.K.Varadhakamaraj
for R1 to R3

J U D G M E N T

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

Captioned 'Civil Miscellaneous Appeal' [hereinafter 'CMA' for the sake of brevity, convenience and clarity] 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 in this Court by an Insurance Company on 06.10.2023.

2. Captioned CMA is directed against an award dated 29.11.2022 made in M.C.O.P.No.1083 of 2013 on the file of 'the Motor Accident Claims

Page Nos.2/15



C.M.A.No.18 of 2024

Tribunal, Tiruvallur at Poonamalee (III Additional District and Sessions Court)' [hereinafter 'said MACT' for the sake of brevity, convenience and clarity]. It is to be noted that 'MACT' is an abbreviation of 'Motor Accident Claims Tribunal'.

3. Factual matrix in a nutshell is that a road accident on 07.08.2012 at about 6.00 p.m. in Tiruttani - Tiruvallur National Highway is the epicenter of the captioned CMA; that on 07.08.2012, one Jayalakshmi was riding a bicycle in Tiruttani - Tiruvallur National Highway from East to West i.e., from Tiruvallur towards Tiruttani and the road accident occurred at Pattabiramapuram Bus Stop; that the road accident happened as a two wheeler i.e., TVS Apache Motor Cycle bearing registration No.TN-20-BJ-2486 [hereinafter 'said two wheeler' for the sake of convenience] which was owned by Mr.S.Nagaraj (first respondent before said MACT and fourth respondent in the captioned CMA and it is to be noted that Mr.S.Nagaraj was riding said two wheeler on 07.08.2012) hit the cyclist (Jayalakshmi); that the cyclist Jayalakshmi sustained severe head injuries and died on the way to the Government Hospital, Tiruttani; that to put it differently, cyclist



C.M.A.No.18 of 2024

Jayalakshmi unfortunately succumbed to the injuries (*inter alia* head injuries) sustained in this road accident; that Jayalakshmi's spouse Mr.G.Baskaran, Son of K.Govindaraju and her two children namely, B.Kavipriya (daughter) and minor B.Sundaresan (son) filed a claim *inter alia* under Section 166 of MV Act in said MACT arraying Mr.S.Nagaraj and Insurance Company (Oriental General Insurance Company Limited, Broadway, Chennai-108, which had insured the said two wheeler) as respondents 1 and 2; that this claim petition (MCOP No.1083 of 2013) was filed claiming a sum of Rs.25 Lakhs; that in the said MACT, first respondent Mr.S.Nagaraj remained *ex parte* but second respondent Insurance Company contested the matter; that it is to be noted, Insurance Company took out an application under Section 170 of MV Act, the prayer was acceded to and therefore, the Insurance Company took the defence which would have been taken by the owner and rider of the said two wheeler; that after full contest as between three claimants on one side and Insurance Company on the other side (to be noted, Insurance Company did not let in any oral and documentary evidence before said MACT) said MACT made an 'award dated 29.01.2022' [hereinafter 'impugned award' for



C.M.A.No.18 of 2024

the sake of brevity and convenience] *inter alia* awarding a sum of a little over Rs.16.03 Lakhs (16,03,600 INR to be precise); that the Insurance Company has filed the captioned CMA assailing the impugned award; that the captioned CMA is in the Admission Board before us today.

4. Mr.S.Senthilkumar, learned counsel on record for appellant - Insurance Company, notwithstanding very many averments and grounds in the Memorandum of Grounds of Appeal, predicated his campaign against the impugned award on two points and they are as follows:

(a) Said MACT erred in awarding consortium, as the accident took place on 07.08.2012 much before ***Pranay Sethi case [National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** was rendered by a Constitutional Bench of Hon'ble Supreme Court on 31.10.2017;

(b) The deceased was a flower vendor and said MACT fell in error in fixing a notional monthly income for her at Rs.8,000/- per month.



C.M.A.No.18 of 2024

5. To be noted, the three claimants have been arrayed as respondents 1 to 3 in the captioned CMA, Mr.S.Nagaraj (owner and rider of the said two wheeler) who remained *ex parte* before said MACT is the fourth respondent in the captioned CMA and Mr.K.Varadhakamaraj, learned counsel, who has lodged a caveat on behalf of respondents 1 to 3 (claimants) is before us.

6. Learned counsel for caveator, on instructions, submits that the claimants have not preferred any appeal and this submission is recorded.

7. Learned counsel for appellant - Insurance Company submitted that the appeal is on quantum and not on liability. This is also evident from the two points that have been canvassed in appellant's campaign against the impugned award. On the basis of the twofold challenge (captured and set out supra) to the impugned award, the following points for consideration arise:

(1) Whether the consortium would have been awarded by said MACT prior to ***Pranay Sethi*** case i.e., prior to



C.M.A.No.18 of 2024

31.10.2017?;

WEB COPY

(2) Whether said MACT fell in error in fixing notional income of Rs.8,000/- per month for the flower vendor?

8. This Court, carefully considered the arguments of learned counsel for appellant - Insurance Company, we also perused the case file before us and we are of the considered view that the captioned CMA deserves to be dismissed and reasons will be set out infra. To be noted, while setting out the reasons, we shall be setting out the submissions / points for consideration, discussion on the same and also give our dispositive reasoning and the same are as follows:

(i) The first point urged by learned counsel for appellant - Insurance Company is, as would be evident from point No.1 vide points for consideration turns on consortium. This simple point canvassed by learned counsel for appellant - Insurance Company is that said MACT should not have awarded



C.M.A.No.18 of 2024

WEB COPY

consortium in a case when accident is prior to ***Pranay Sethi*** case. We carefully and respectfully perused ***Pranay Sethi*** case judgment reported in ***(2017) 16 SCC 680*** and a careful and respectful perusal of ***Pranay Sethi*** case makes it clear that ***Pranay Sethi*** case while partly overruling an earlier judgment of Hon'ble Supreme Court in ***Sarla Verma*** case [***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***] (rendered on 15.04.2009 by a two member Bench of Hon'ble Supreme Court) has not disturbed the consortium awarded in ***Sarla Verma*** case. On the contrary, Hon'ble Supreme Court has amplified the law under the heads of consortium and Hon'ble Supreme Court in ***Pranay Sethi*** case vide paragraph No.59.8 has held that compensation for loss of consortium would be Rs.40,000/- and it should be enhanced at the rate of 10% every three years. In other words, the concept of awarding compensation for loss of consortium was not alien to the Motor Accident Claims Tribunal prior to ***Pranay Sethi*** case.



C.M.A.No.18 of 2024

WEB COPY

In this view of the matter, we are unable to find fault with said MACT for awarding consortium considering that the deceased was 31 years old on the date of accident and first claimant (spouse of the deceased) was 41 years on the said day. To be noted, the third claimant was a minor. As regards, consortium, the same has been dealt with by said MACT vide sub-paragraph (h) of paragraph No.12 of the impugned award which reads as follows:

'12. Point No.4

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) Loss of Consortium :

The Hon'ble Supreme Court has, in National Insurance Company Limited Vs. Pranay Sethi and others (Date of Judgment : 31.10.2017), cited supra, envisaged that under the head, loss of consortium, a sum of Rs.40,000/- may be awarded, and that the aforesaid amount should be



WEB COPY



C.M.A.No.18 of 2024

enhanced at 10% in every three years. By the death of their mother, the petitioners 2 and 3 lost the love of their mother throughout their life. The Hon'ble Supreme Court in the case of United India Insurance Co. Ltd., Vs. Satinder Kaur alias Satwinder Kaur and others [2020 (2) TN MAC 1 (SC)] has observed that in legal parlance, 'consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. In view of this, it is clear that the petitioners are entitled to consortium. Hence, the first petitioner being the husband and petitioners 2 and 3 being the children of the deceased, each is awarded Rs.44,000/- under the head of consortium and the same is, accordingly awarded.'

A careful perusal of above paragraph No.12(h) of the impugned award shows that said MACT has respectfully followed ***Pranay Sethi*** case and that said MACT has even noted the date of judgment i.e., 31.10.2017. Though the judgment is prospective in the light of consortium not being alien as discussed in the earlier part of this discussion, we find no infirmity in awarding compensation for loss of consortium. As



C.M.A.No.18 of 2024

WEB COPY

regards quantum, we find that Rs.1.32 Lakhs is not so steep and so unreasonable warranting our interference in a Section 173 of MV Act legal drill. We also notice that the Insurance Company, which was lone contestant before said MACT has not let in either oral or documentary evidence in the trial Court / said MACT. We also notice that in ***Pranay Sethi*** case, in paragraph No.46 (as reported in SCC i.e., ***(2017) 16 SCC 680***) Hon'ble Supreme Court referring to paragraph No.17 of ***Rajesh*** case i.e., ***Rajesh Vs. Rajbir Singh*** reported in ***(2013) 9 SCC 54*** has elucidatively explained what consortium is. However, what is of relevance qua the case on hand is, in paragraph No.46 of ***Pranay Sethi*** case, Hon'ble Supreme Court has clearly noticed that in ***Sarla Verma*** case rendered on 15.04.2009 (prior to the date of the accident i.e., prior to 07.08.2012) the award of Rs.10,000/- consortium has been noticed and the same has not been disturbed as already alluded to supra in the earlier part of this discussion. Hon'ble Supreme Court has developed the law and has put in place a formula / mechanism for computation



C.M.A.No.18 of 2024

WEB COPY

saying it would be Rs.40,000/- with 10% increase once in three years. This drops the curtains on the first point that has been canvassed. In other words, Point No.1 vide points for consideration is answered against the appellant - Insurance Company.

(ii) This takes us to the second point i.e., fixing notional income. This does not present much of a problem as a careful perusal of the impugned award makes it clear that said MACT has clearly mentioned that Rs.8,000/- per month is notional. Other than the bank passbooks of the first claimant (spouse of deceased) and second claimant (major son), no other finance document was before said MACT. Rs.8,000/- per month translates into Rs.267/- (to be noted, there is approximation of the decimal as exact figure is Rs.266.66) and even on a thumb rule, this Court is unable to persuade itself to believe that this is high or so high or steep warranting interference in a Section 173 of MV Act Statutory Appeal legal drill. To be noted, this is



C.M.A.No.18 of 2024

WEB COPY

more than a decade ago as the date of accident is 07.08.2012 and the deceased was 31 years of age, a flower vendor would have blossomed into a florist / bouquet shop owner but without going into that realm of surmises and conjectures, it will suffice to say that 267 INR per day for a flower vendor, who is an entrepreneur in her own right (to be noted, she was riding a bicycle) can hardly be said to be improper or incorrect. To be noted, we have taken this view considering the facts and circumstances of the case on hand and therefore, we make it clear that this will not operate as across the board precedent in all Motor Accident Claims Tribunal cases.

In the light of the narrative, discussion and dispositive reasoning, we have no hesitation in saying that captioned CMA of the appellant - Insurance Company fails.

Ergo, the sequitur is captioned CMA is dismissed. Consequently, captioned CMP which has been taken out for interim stay also perishes



C.M.A.No.18 of 2024

along with captioned CMA. Captioned CMP is also consequently,
dismissed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

09.01.2024

Index : Yes

Speaking

Neutral Citation : Yes

mk

To

1. The Additional District and Sessions Judge,
Additional District and Sessions Court,
Motor Accident Claims Tribunal No.III,
Tiruvallur at Poonamallee.
2. The Section Officer
V.R.Section
High Court, Madras.



WEB COPY



C.M.A.No.18 of 2024

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

mk

C.M.A.No.18 of 2024

09.01.2024