

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

C.M.A. No.3089 of 2023
and
C.M.P. No.29302 of 2023 in C.M.A.No.3089 of 2023

Reliance General Insurance Company Ltd.,
Rai's Tower, 2nd Floor,
No.2054, 2nd Avenue, Chennai – 40. .. Appellant

vs

1.N.Vijayalakshmi
2.R.Kamal .. Respondents

Appeal filed under Section 173 of The Motor Vehicles Act,
1988 against the judgment and decree dated 27.07.2023 passed in
M.C.O.P. No.6384 of 2015 on the file of Motor Accidents Claims
Tribunal Special Sub Judge II, Court of Small Causes, Chennai.

For Appellant	:	Mr.P.Suresh Srinivasan
For Respondents	:	Mr.P.C.Ramesh for Ms.J.Jayapriya for R1/Caveator

JUDGMENT

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

Captioned main 'Civil Miscellaneous Appeal' (hereinafter 'CMA' for the sake of brevity) has been filed in this Court on 12.12.2023.

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 by an insurance company which had insured a car owned by one R.Kamal (second respondent before this Court) in which N.Vijayalakshmi was a passenger and she suffered serious injuries owing to a road accident on 03.07.2015. To be noted, N.Vijayalakshmi is claimant before the Motor Accidents Claims Tribunal.

3. Aforementioned CMA has been filed by the insurance company assailing an award dated 27.07.2023 made in M.C.O.P.No.6384 of 2015 on the file of 'Motor Accidents Claims Tribunal being Court of Special Sub Judge II, Court of Small Causes, Chennai' (hereinafter 'said MACT' for the sake of convenience and clarity). This '27.07.2023 award' shall be referred

to as 'impugned award' for the sake of convenience.

4. Short facts are that owing to the aforementioned road accident on 03.07.2015, N.Vijayalakshmi (first respondent before us) suffered injuries and she made a claim of Rs.1 crore before said MACT vide aforementioned M.C.O.P.No.6384 of 2015 and said MACT after full contest/full trial awarded a little over Rs.83.57 lakhs i.e., Rs.83,57,520/- to be precise. Insurance company has filed the captioned CMA saying that this quantum is high. To be noted, captioned CMA by the insurance company is only on quantum and not liability.

5. Today, in the Admission Board, Mr.P.Suresh Srinivasan, learned counsel for insurance company and Mr.P.C.Ramesh, who is on caveat on behalf of the claimant are before us.

6. Learned counsel for insurance company assailing the impugned award (notwithstanding very many grounds that have been articulated in the memorandum of grounds of appeal) predicated his campaign against the impugned award on two points and they are as follows:

- (i) 40% should not have been applied and that has increased the quantum of award vastly;*
- (ii) Disability percentage has been erroneously*

fixed at 90%.

7. On the aforesaid grounds canvassed, the points for determination that arise in the captioned CMA are:

(i) Whether said MACT was correct in applying 40% principle in arriving at the quantum of impugned award?

(ii) Whether said MACT was correct in fixing 90% as loss of earning capacity in the light of claimant having become paraplegic?

8. We carefully considered the arguments. We perused the case file before us and we are of the considered view that captioned CMA deserves to be dismissed and the reasons will be set out infra. To be noted, while setting out the reasons, we shall be setting out the points urged, discussion on the same and the dispositive reasoning together. The points, discussion and dispositive reasoning are as follows:

8.1 As regards the first point regarding 40% addition of established income, the dispositive reasoning is fairly simple owing to authoritative pronouncement of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** and more particularly paragraph 59.4 thereat which reads as follows:

'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.'

8.2 In *Pranay Sethi's* case, *Sarla Verma* principle being principle laid down in ***Sarla Verma Vs. Delhi Transport Corporation*** reported in **(2009) 6 SCC 121** was upheld. As regards paragraph 42 of *Sarla Verma's* case, though *Sarla Verma's* case was partly overruled in *Pranay Sethi's* case (paragraph 42 of *Sarla Verma's* case sustained), we are concerned only with paragraph 59.4 of *Pranay Sethi's* case which has been extracted and reproduced supra. The reason is, the claimant was 35 years old on the date of the accident viz., 03.07.2015 and there is no disputation or contestation that the claimant became paraplegic. This means that the mobility of the claimant is seriously afflicted. Considering the age and considering the fact that the claimant was working as a Senior Infra Engineer in a private company drawing a

monthly salary of Rs.27,500/-, 40% addition of established income by said MACT applying *Pranay Sethi* principle cannot be found fault with. To be noted, said MACT has specifically referred to *Pranay Sethi* in sub-paragraph (ii) of paragraph 8.2. Citation which said MACT has relied on is 2017 (2) TNMAC 609 and it is to be noted that the equivalent in SCC is (2017) 16 SCC 680 as already alluded to supra. This sub-paragraph (ii) of paragraph 8.2 of the impugned award reads as follows:

'8.2

(i)

(ii) Future Prospects:

As per the judgment of Hon'ble Apex Court reported in 2017(2)TNMAC 609 between National Ins. Co. Ltd. Vs. Pranay Sethi and others the future prospects to be added. As decided in that case the future prospects for the age group below 40 in fixed salary is 40% which will come to a sum of Rs.11,000/- (27,500 x 40/100) the total monthly income is Rs.38,500/- in this amount the income tax at the rate of 10% needs to be deducted so 38,500 x10/100 = Rs.3,850/- to be deducted so the balance is Rs.34,650/-. Thus, the annual income of the petitioner fixed as Rs.4,15,800/- (34,650 x 12).'

8.3 In the light of the authoritative pronouncement of

Hon'ble Supreme Court, we find that said MACT has correctly applied 40% addition of established income and therefore the first point does not cut ice with us. In other words, the first point does not find favour with us. We add that the first point is a non-starter in the light of the settled position of law.

8.4 This takes this Court to the second point which is on disability. As regards disability, point for determination that has been framed by said MACT is point No.3 and the same reads as follows:

'(3) Whether the petitioner is entitled to get compensation if so, what should be the quantum of compensation, and by whom it is payable?'

8.5 This point No.3 has been answered in paragraph 8 of the impugned award and the most relevant portion of paragraph 8 reads as follows:

'8.ANSWER FOR POINT No.3:

8.1 As decided in the above points the accident was happened due to the rash and negligent driving of the 1st respondent car driver, resulted the petitioner sustained grievous injury as per the Ex.P4 Accident Register. Then she referred to medical

board to fix her disability and on examination the board of doctors decided that she is suffered from post-traumatic sequelae and fixed her disability as 90% as per the Ex.C1 disability certificate. The main contention of the petitioner side is that, below hip she totally lost her senses and confined to wheel chair without movement resulted she lost her job.

8.2 Considering the above fact this court decided that so its a fit case adopt multiplier method since she lose of her sense below hip lost her earning capacity due to the accident and disability fixed as 90%.'

8.6 A careful perusal of the aforementioned articulation in the impugned award makes it clear that 90% loss of earning capacity fixed by said MACT cannot be found fault with as there is no disputation or contestation that the claimant became paraplegic. In this regard, two case laws of Hon'ble Supreme Court are of immense relevance and they are ***Raj Kumar Vs. Ajay Kumar*** reported in ***(2011) 1 SCC 343: 2010 SCC OnLine SC 1166*** which was followed by Hon'ble Supreme Court in ***Ankur Kapoor Vs. Oriental Insurance Co. Ltd.*** reported in ***2017 SCC OnLine SC 1294.***

8.7 As regards *Raj Kumar's* case and *Ankur Kapoor's* case,

Hon'ble Supreme Court drew out a discerning distinction between pecuniary damages and non-pecuniary damages i.e., while pecuniary damages were classified as special damages, non-pecuniary damages were classified as general damages. Under pecuniary damages, loss of earning due to injury, during treatment, future loss were all slotted. Under non-pecuniary damages, pain and suffering, amenities and expenditure in this regard, non-tangible increase were slotted. It may not be necessary to dilate much on these pecuniary damages and non-pecuniary damages i.e., special damages and general damages as the effect of disability on earning capacity has to be assessed by applying a test which is three fold and which has been articulated elucidatively by Hon'ble Supreme Court in *Raj Kumar's* case in paragraph 13, which reads as follows:

'13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is

to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.'

8.8 To be noted, as already alluded to supra, *Raj Kumar's* case (supra) has been followed by Hon'ble Supreme Court in *Ankur Kapoor's* case (supra). This governs the field. In the case on hand, the claimant having become paraplegic obviously could not have continued her avocation and therefore what the said MACT has fixed at 90% is not disability but loss of earning capacity. There is a clear distinction between percentage of disability and percentage of loss of earning capacity. This also has been elucidatively laid down by Hon'ble Supreme Court in *Raj Kumar's* case (supra) and the relevant paragraph is paragraph 13 (supra).

This means that the second point also does not cut ice with us.

9. This Court having set out the two grounds on which campaign of the insurance company against the impugned award was predicated and having discussed the same given its dispositive reasoning now notices that learned counsel for caveator submits that the claimant has not preferred any appeal. This submission is recorded. This further means that it is curtains qua the unfortunate road accident, the episode and the litigation culminating in this appeal. Sequitur is aforementioned points for determination stand answered against the appellant insurance company.

10. In the light of the narrative, discussion and dispositive reasoning thus far, captioned CMA fails and the same is dismissed. Consequently, captioned 'Civil Miscellaneous Petition' ('CMP' for the sake of brevity) also fails 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
Neutral Citation : Yes / No
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C.M.A.No.3089 of 2023

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

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To

The Motor Accidents Claims Tribunal,
Special Sub Judge II,
Court of Small Causes, Chennai.

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