IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 154 OF 2022

WITH

INTERIM APPLICATION NO. 957 OF 2022

IN

FIRST APPEAL NO. 154 OF 2022

Cholamandalam MS General Insurance Co. Ltd.
through its Manager ….Appellant
(Ori. Opponent No.2)

Vs.

Ms. Charu Ashok Khandal (deleted)

1. Ashok Radheshyam Sharma Khandal

2. Mrs Pawan Ashok Khandal

3. Rutu Ashok Khandal

4. Mr Manoj Kumar N Gautam ….Respondents

Mr. Rajesh Kanojia a/w Deepika Prabhala for the Appellant/Applicant.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
RESERVED ON : 27 FEBRUARY 2025
PRONOUNCED ON : 09 MAY 2025

JUDGMENT (PER ADVAIT M. SETHNA, J.):

1. As observed by us in our earlier order dated 27 February 2025 the first appeal Admitted on 6 February 2025, is taken up for final hearing and disposal.

2. The case before us is rather heart-wrenching and a tragic saga of a young aspiring professional girl working as a character animator with a reputed media production house aged 28 years. At prime of her youth, she met with a fatal accident on 25 March 2012 in Mumbai and thereafter succumbed to serious cervical spinal cord injuries. She courageously faced the ordeal for about five years, and on 17 January 2017 she passed away. It is after such accident that the deceased original claimant filed the claim for compensation before the Motor Accident Claim Tribunal ("**MACT**") on 10 June 2014 under Section 166 of the Motor Vehicles Act, 1988 ("**MV Act**").

3. The appellant i.e. Cholamandalam General Insurance Company Ltd. has assailed the impugned judgment of MACT, Mumbai in MAC application No.875 of 2014, dated 27 November 2020 ("***Impugned Judgment***"). Such challenge is mainly on the ground that the MACT grossly erred in awarding the compensation of Rs.62 Lakhs to the victim being contrary to the facts on record and the provisions of law as would be applicable.

4. We have heard Mr. Rajesh Kanojia, learned counsel for the appellant. None appears for the respondents, though served. With the assistance of the learned counsel before us we have perused the record.

5. Mr. Kanojia would at the very outset take us through the impugned judgment of the MACT dated 27 November 2020, the operative part of which reads thus:-

> *"1. Application is allowed in part with proportionate costs.*
>
> *2. Opposite Party and Insurer do pay jointly or severally a sum of* ***Rs 62,20,000/- (Rs Sixty Two Lakh Twenty Thousand Only)*** *inclusive of NFL, to the applicant Nos. 1 & 2 along with interest @ 7.5% p.a. from the date of application till realisation.*
>
> *On deposit of amount:*
>
> *Rs 15,00,000/- each be invested in the name applicant Nos.1 and 2 in Fixed Deposit with any Nationalised Bank for the period of 4 years.*
>
> *Remaining amount with accrued interest be paid equally to the applicant Nos. 1 and 2.*
>
> *3. Opposite party and/or insurer are directed to make payment by A/c payee cheques duly crossed and drawn in the name of applicant Nos. 1 and 2 by depositing the same in the Tribunal.*
>
> *4. Investment cheques issued by Opposite party owner or the insurer, as the case may be, shall be in the name of Account Officer, MACT, Mumbai. Separate cheques for investment & disbursement be tendered by Opposite party owner or insurer.*
>
> *5. On receiving the cheques, Account Officer shall handover said cheques to the applicant Nos. 1 and 2 by obtaining acknowledgment thereof on payment of deficit court fees, if any.*
>
> *6. Award be drawn accordingly."*

6. Our attention is then invited to the issues framed in the impugned judgment which reads thus:-

> *"1. Do the applicants prove that on 25/03/2012, at about 00-33 hrs., at the junction of Oshiwara Link Road and Lokhandwala to Hirapanna Mall Road, Charu (deceased) sustained injuries and succumbed to her injuries on 17/01/2017, in an accident which occurred due to rash and negligent driving of Motor Car No. MH-02-JP-2959?*
>
> *2. Does the insurer prove that claim is bad for non-joinder of necessary party i.e. owner and insurer of Auto rickshaw No. MH-03-BA-0371 in which the applicant (deceased) was traveling?*
>
> *3. Does the insurer prove that the insured has committed breach of terms and conditions of policy?*
>
> *4. Are the applicants entitled to compensation? If yes, to what extent and from whom?"*

7. The relevant facts as placed before MACT, necessary for adjudication of this appeal are as under:

8. It was on 25 March 2012 at about 00:35 hours that the original claimant, her sister i.e. respondent No.3 and friend were traveling in a passenger auto rickshaw from Juhu to Malad along linking road, Mumbai when the said Autorickshaw was passing the junction of Shriji Hotel i.e. junction of Oshiwara Link Road and Lokhandwala to Hirapanna Mall road, one motor car bearing registration No.MH-02/JP-2959 coming from the opposite direction on Oshiwara

Link Road, took a sudden right turn, at great speed without any indication giving a forceful push to the autorickshaw. Resultantly, the said autorickshaw turned turtle and all occupants travelling in it suffered serious injuries. All the injured passengers were shifted to Dr. R. M. Cooper Hospital. A First Information Report ("**FIR**") dated 25 March 2012, i.e., on the date of the accident was lodged with the Oshiwara Police Station, which culminated in a charge-sheet dated 20 September 2012 registered by the officer in-charge, Oshiwara police station.

9. The condition of the original claimant and her friend being extremely critical were shifted on the same date, i.e., 25 March 2012 to Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute ("**Kokilaben Hospital**"). The original claimant underwent treatment from 25 March 2012 to 29 June 2012 at the said hospital. Even after which, the treatment continued. According to the respondents, a sum of about Rs.20,00,000/- (Rupees Twenty Lakhs) was spent on such medical treatment.

10. As per the diagnosis of the original claimant at the Kokilaben Hospital and as set out in the discharge card of such hospital, she suffered cervical spinal-cord injuries (#of CR3,C5). [Such injuries further resulted in Quadriplegia, resulting in permanent disability of the original claimant.] As stated by the original claimant, she was earning Rs.30,000/- per month in her professional employment with M/s. Red Chillies Entertainments Pvt. Ltd., Mumbai. The respondent would contend

before the MACT that the accident occurred due to rash and negligent driving of the offending vehicle which at the relevant time of the accident was owned by the opposite party and duly insured with the appellant-insurance company.

11. The original claimant filed an application dated 10 June 2014 for compensation under Section 166 of the MV Act before the MACT setting out all necessary details including that of the accident and in the given facts and circumstances, claimed monetary compensation of Rs.5 crores from the appellant-insurance company.

12. At this juncture Mr. Kanojia, learned counsel for the appellant has raised limited issues for our consideration in this appeal. He would first submit that there is no nexus between the accidental injuries suffered by the original claimant and her death; the tribunal erred in considering her claim as a death claim; the disability certificate dated 16 December 2013 issued by the medical and health department, SMS hospital, Jaipur as not proved by the respondent before the MACT and certain medical bills despite being paid by the appellant-insurance company were not proved by the respondents before the MACT during the proceedings. Mr. Kanojia would submit that though the accident had taken place on 25 March 2012, the death of the original claimant had occurred on 17 January 2017 i.e. almost after a span of 4 years and 10 months from the date of the accident. Thus, according to the appellant there is nothing on record to prove that there was

any direct nexus between the accidental injuries and the death of the original claimant. According to the appellant, the MACT duly noted such fact in paragraph 25 and 31 of the judgment, but erroneously proceeded on an assumption that the death may have occurred due to the quadriplegic condition of the original claimant, despite this not being proved.

13. Mr. Kanojia would urge that it is an admitted position that the death of the original claimant was not immediate or instant, after the accident, but occurred after a substantial gap of 4 years and 10 months from the date of such accident. According to the appellant, it is an admitted position that the original claim application/petition lodged with the MACT was filed by the injured herself and that post her death, her father i.e. the respondent no.1 had filed an application for bringing her legal heirs on record. According to the appellant, there is no application filed for converting the injury claim application/petition to that of a death claim application/petition, and that the MACT had suo moto treated such injury claim application as a death claim petition. The appellant would therefore submit that the MACT has seriously erred in deciding the injury claim application as a death claim petition, contrary to law.

14. Mr. Kanojia would next submit that considering the factual matrix as noted above, the MACT ought to have decided the application of the original claimant as an injury claim petition and it was therefore, incumbent upon the

respondents to prove the disability certificate dated 16 December 2013 issued by the SMS hospital, Jaipur. However, according to the appellant such certificate was not proved and/or corroborated by any doctor from the said board of the SMS hospital, Jaipur. The appellant would thus submit that in the absence of oral evidence, the disability certificate is merely an expert opinion as stipulated under Section 45 of the Evidence Act, 1872 ("**Evidence Act**"). The said certificate, without any oral evidence of the doctor and further without affording an opportunity to the appellant to cross examine the doctor who issued it, holds no evidentiary value, which the MACT failed to appreciate. Further, such disability certificate was also issued by a non-treating doctor as the original claimant had taken treatment from Kokilaben Hospital at Mumbai, whereas, the disability certificate was issued by the medical board, SMS hospital, Jaipur. The appellant would thus submit that when the disability certificate itself was not proved, the MACT could never have granted any compensation towards such disability caused to the original claimant in the accident.

15. Mr. Kanojia would then urge that the medical bills which were placed before the MACT were not proved by the respondents. However, the appellant would admit and not dispute the medical bills issued by the Kokilaben hospital at Mumbai for an amount of Rs.16,24,389/-. Accepting such position, the appellant would contend that the MACT erred in awarding a sum of Rs.4,05,921/- even when the MACT observed in paragraph 31 of the impugned judgment that there

was no witness examined to prove the said bills. Thus, when the medical bills were not proved, there was no question or occasion to consider such bills for the purposes of assessment and determination of compensation. Accordingly, the appellant would submit that an amount of Rs.4,05,921/- has been erroneously awarded in favour of the original claimant/respondents, in the given facts and circumstances.

16. On hearing Mr. Kanojia at length and taking note of the limited issues as crystallized by the appellant, we would examine and adjudicate on the submissions as canvassed before us in the appeal. In such conspectus, we would first refer to some undisputed facts namely:- the occurrence of the accident on 25 March 2012; the life-threatening injuries suffered by the original claimant pursuant to such accident; no dispute on the correctness of such details of the accident as submitted by the original claimant/respondents in the application dated 6 June 2014 filed before the MACT; the admission of the appellant to the medical bills for Rs.16,21,989/- issued by the Kokilaben hospital, Mumbai; the discharge summary/certificate issued by Kokilaben hospital dated 29 June 2012; the fact of continuing medical treatment the original claimant had to undergo in Jaipur Rajasthan after being discharged from Kokilaben hospital at Mumbai. These would be relevant in deciding the appeal.

17. We would proceed to deal with the submissions of Mr. Kanojia as under:-

A. Medicall bills not proved

18. The appellant would not dispute the medical bills raised by the Kokilaben hospital, Mumbai amounting to Rs.16,21,989/- for the treatment that was administered to the original claimant at the said hospital during the period 25 March 2012 to 29 June 2012. In this regard we would also refer to the uncontroverted evidence of AW-3 i.e. Santosh Sharma-Company Secretary and Assistant General Manager of Kokilaben hospital at Mumbai dated 8 August 2017, who deposed that such bill of Rs.16,21,989/- was duly paid by the family of the original claimant, which would support the case of the respondents in this regard.

19. Though AW-3 was cross examined by the appellant, his evidence is unassailed by the appellant. From the evidence of AW-1 i.e. Ashok Radheshyam Khandal i.e. the father of the original claimant, it is clear that such medical bills of Kokilaben hospital were also a part of his affidavit of evidence dated 14 June 2017. In this context AW-1 in his evidence has deposed that after taking treatment from Kokilaben hospital, the original claimant was shifted to Jaipur under the medical care and examination of Dr. Shrikant, for which, the medical bills amounted to Rs.2,39,111/- for the ongoing treatment meted out to the original claimant at Jaipur. Therefore, the total medical expenditure as deposed by AW-1 in his evidence as incurred for treatment of the original claimant was Rs.18,88,784/-.

20. In the above context, we may observe that the AW-1 i.e. respondent No.1 had made reference to all such bills and vouchers in his examination-in-chief. It is not the appellant's case that such medical bills, vouchers were fabricated as also deposed by AW-1 in his cross examination. The substantial amount of bills which were that raised by the Kokilaben hospital to the tune of Rs.16,21,989/- were admitted by the appellant and thus uncontroverted. We find that the MACT has correctly applied its mind to the breakup of the remaining amount of medical bills to the extent of Rs.2,39,111/- as referred to by the respondents and also by AW-1 i.e. respondent No.1 in his affidavit of evidence which would include the services of paramedical professionals like physiotherapist who were engaged on a monthly basis to treat the deceased original claimant, as also the monthly expenditure incurred on toiletries i.e. diapers, hand-gloves etc., for medicines at Jaipur and doctors visit including regular tests and continuous followups. It is an undisputed fact that the original claimant was taken to Jaipur after being discharged from the Kokilaben Hospital at Mumbai on 29 June 2012. She was residing in Jaipur since then until she passed away on 17 January 2017. It is not disputed by the appellant that during the period of five years of the original claimant being in Jaipur, she was taking any treatment. It is also not the appellant's case and that any of the bills/medical documents and/or records were fabricated.

21. The MACT after considering all of this and that the proceedings before it were summary in nature and the settled law that a tribunal of such kind

was not bound by the strict rules of evidence as under criminal law, came to a reasoned conclusion that the total expenditure came to Rs.4,05,921/-. The MACT on proper application of mind, after considering the injuries of the original claimant and her long treatment duration held that these expenses were inevitable and not unreasonable or unnecessary. We do not find any infirmity with the finding of the MACT in the impugned judgment that throughout the period of five years, the deceased in the given facts would have required an attendant taking into consideration her medical condition. As the expenditure for toiletries, hygiene were not covered in the bills/payment receipts produced by the respondents, the MACT awarded a sum of Rs.1,25,000/- towards attendant charges and Rs.50,000/- in favour of the original claimant towards toiletries. We may observe that such expenses as awarded by the Tribunal to the extent of Rs.1,75,000/- towards toiletries and attendants charges over a period of five years from 2012 to 2017, would not exceed Rs.3,000/- per month is nothing but fair and reasonable. This by no stretch of imagination is unreasonable much less exorbitant for us to disturb such findings in the impugned judgment.

22. We may observe that it would be extremely harsh, excessive and rather too pedantic an approach in such matters of life and death if we are to assess every single medical bill with mathematical accuracy which is not what the law would mandate. The MACT has correctly followed the well established legal principles and parameters in this regard. We are bound by the principles as evolved

from the judicial decisions as in ***Rajwati @ Rajjo Vs. United India Insurance Co. Ltd. & Ors.***[1] where the Supreme Court held that the standard of proof in cases under the MV Act unlike a criminal trial would be that of preponderance of probability and not strict standard of proof beyond all reasonable doubt which is to be followed in criminal matters. Such reasoned finding is duly supported by a decision of our Court in the case of ***Dr. Dattatraya Laxman Shinde Vs. Nana Raghunath Hire & Ors.***[2] and other decisions which would support the conclusion of the MACT in regard to the issue of medical bills as alleged to be disproved by the appellant stand duly proved by the respondents amounting to Rs.20,27,910/-, which would include medical bills of Rs.16,21,989/- raised by Kokilaben Hospital which are not disputed by the appellant and further Rs.4,05,921/- to include other bills for expenses incurred by the respondents towards the treatment of original claimant at Jaipur which for the reasons set out above are correctly allowed/granted by the MACT in its impugned judgment. The findings in the impugned judgment in this regard would not warrant any interference.

B. Disability certificate not proved

23. The disability certificate dated 16 December 2013 produced by the respondents on record before the MACT is issued by the medical board of SMS Hospital, Jaipur. A perusal of such certificate would clearly indicate that the deceased original claimant suffered 90% permanent disability. The description of

1 2022 SCC OnLine SC 1699
2 2011 6 BomCR 553

such disability read *"Traumatic Quadriplegia (cervical spine injury) for C4-C5 vertebrae"*. In this context we would refer to the discharge summary/certificate issued by the Kokilaben Hospital dated 29 June 2012, where the primary diagnosis of the deceased original claimant was stated to be "A/H/O/RTA with cervical spinal-cord injury with fracture C4-C5-C-6". The said document is not disputed and/or controverted by the appellant. In fact the discharge summary/certificate of the Kokilaben Hospital which is not disputed by the appellant would corroborate the findings in the certificate dated 16 December 2013 issued by the SMS Hospital, Jaipur to show that the medical condition of the deceased original claimant has not changed from June 2012 onwards and has in fact deteriorated. It is pertinent to note that the reason for such permanent disability i.e. the medical condition of quadriplegia is duly corroborated by the evidence of Dr. Sondeo Bansal, medial practitioner who during his cross-examination by the appellant as recorded on 30 July 2019 would state that quadriplegia means that there are no movements of upper limb and lower limb of the patient as also that quadriplegia results in septicemia which can result in septicemia shock and that quadriplegia causes septicemia and septicemia thrombocytopenia which means decrease in platelets as stated by him during his cross-examination. Despite he being cross-examined, such evidence has remained uncontroverted and unassailed as far as the appellant is concerned and thus stands proved against the appellant.

24. We may observe that the disability certificate dated 16 December 2013, produced by the respondents is of the SMS Hospital, Jaipur, as issued by the

said hospital being a government/public hospital is not in dispute. It is contended that, such document/certificate would fall within the parameters of Section 74 of the Evidence Act which refers to public documents. From the evidence of AW-1 i.e. father of the deceased original claimant, it comes to light that the appellant would not dispute that the certificate was issued by the SMS Hospital Rajasthan i.e. a government hospital. The officers issuing such certificate are public officers. Thus it partakes nature of a public document under Section 74 of the Evidence Act. The MACT has in its impugned judgment in the findings recorded on the said disability certificate (at paragraph 18) cannot be faulted. Moreover, thre is no plea taken by the appellant on applicability of Section 77 of the Evidence Act. We cannot be oblivious to the fact that the said disability certificate is admittedly issued by a government hospital and only because it is not prepared by the treating doctor, which alone cannot be the sole basis for inadmissibility of such document. In this view of the matter, we find no infirmity much less illegality in the impugned decision as far as its findings on the said disability certificate dated 16 December 2013, is concerned.

C. Error by the MACT in considering the claim as death claim

25. On a careful perusal of the record, we find that the application of the deceased original claimant before the MACT dated 10 June 2014 describes the accident, its details as also the nature of injuries sustained by the applicant. Pertinent it is to note that considering the nature of injuries, described as cervical

cord injuries (#of C3C5) resulting in quadriplegia. |Such application and/or the contents thereof are not disputed by the appellant. It is also not disputed that the deceased original claimant expired on 17 January 2017 in Jaipur where she resided as she did not recover from her treatment in Kokilaben Hospital at Mumbai, from where she discharged on 29 June 2012. The death certificate as noted by us above refers to the cause of death as septicemia, as a consequence of traumatic quadriplegia as set out in the death certificate issued by the Metro Multiplicity Hospital at Jaipur by Dr. Sondeo Bansal i.e. AW-5 which is again uncontroverted by the appellant. Despite such clear material on record, the appellant has chosen to take a hyper technical plea on the ground that the MACT erred in considering the claim as death claim. In this regard it is apposite to refer to the provisions of Sectioin 166 of the Motor Vehicles Act, more specifically Section 166(C) which reads thus:-

> *"166. Application for compensation*
>
> *(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 maybe made-*
>
> *(a) by the person who has sustained the injury; or*
>
> *(b) by the owner of the property; or*
>
> *(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*
>
> *(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.*

PROVIDED that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application:

[PROVIDED FURTHER that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

[(2) Every application under sub-section (1) shall be made, at the option of claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or with the local limits of whose jurisdiction the defendant resides, they shall be in such form and contain such particulars as may be prescribed:

[PROVIDED that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to the effect immediately before the signature of the applicant.]

[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]"

Section 165 reads thus:-

"**165. Claims Tribunals**

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation: For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under [section 164].

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a High Court Judge [or as a District Judge.]

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them."

A bare perusal of the said provisions make it abundantly clear that an application for compensation arising out of an accident of the nature specified

under Section 165(1) would include accidents involving death arising out of the use of motor vehicles as stipulated under the above provision. Thus, in the given facts and circumstances, the application dated 10 June 2014 filed by the deceased original claimant filed under Section 166 of the Motor Vehicles Act would clearly cover a death claim, when the death as resulted from the accident arising out of the offending motor vehicle as provided under Section 165 of the Motor Vehicles Act. Therefore, on perusal of the statutory scheme under the Motor Vehicles Act, it is abundantly clear that the submission of Mr. Kanojia to the effect that the claim of the deceased original claimant could not be considered as a death claim is devoid of merit, contrary to law and ought to be rejected.

D. No nexus between accidental injuries and death

26. We would at this juncture deal with the submission of Mr. Kanojia to the effect that there is no nexus between accidental injuries and death, on which ground alone according to the appellant the claim of the respondent should have been rejected. In the above context, we would firstly refer to the application of the deceased original claimant dated 10 June 2014. The deceased original claimant has given a complete account of her personal details, monthly income, date and place of the accident including the details in which hospital she was administered treatment, period of the treatment and nature of injuries sustained by her which as stated are in the nature of cervical spinal-cord injuries (#of C3,C5) resulting in quadriplegia.

The contents of such application are neither disputed nor controverted by the appellant.

27. Further to the above, to prove the nature of injuries sustained by the deceased original claimant, we may refer to the evidence of AW-5 i.e. Dr. Sondeo Bansal, who was treating the deceased original claimant before she passed away in Jaipur. The examination-in-chief and cross-examination which are crucial in the given facts and circumstances read thus:-

> *"Name: Dr.Sondeo Bansal*
> *Occupation:Medical Practitioner*
> *Age: 39yrs.*
> *Residence: Jaipur*
>
> *Examination in Chief by Adv. Jethwa for the applicant:-*
> *1. Since 2009, I am practicing as a doctor. One Charu Khandal came to my hospital in emergency on 14.1.17. She was in septicemia shock at the time of admission. She died due to septicemia I am now shown certificate of cause of death. It is singed by resident doctor on my behalf. The contents are correct. Its is at Ex.55.*
>
> *Opposite party - Ex-parte.*
> *Cross examination by Adv. Virkar for the insurer:-*
> *12. I am not aware about the condition of the patient at the time of discharge from kokilaben hospital. I have gone through the said medical papers of Kokilaben hospital. I cannot say whether I have seen the medical tests and reports from 2012 to 2017. Witness volunteers that what is shown to me I have gone through that papers. I cannot recollect which report shown to me. I have no idea whether after discharge from Kokilaben this patient was managed at home without any other history of further admission to hospital. Patient was admitted from 14.1.17 to 17.1.2017.*
>
> *13. Due to non availability of network connection matter adjourned till next date.*
>
> *Resumed cross examination by Adv. Virkar for the insurer:-*
> *It is not correct to say that on 15/01/2017 when Charu was admitted in hospital she was suffering from fever due to Dengue.*
> *Q: What is hypothyroidism?*

Ans- When T3 and T4 decreases, it is called hypothyroidism.
It is true that patient had a history of hypothyroidism.

Q:Why hypothyroidism is not mentioned in death summary as referred in clinical notes?
Ans- Patient can not die due to hypothyroidism and therefore it is not mentioned.

It is correct that hypothyroidism caused bradycardia.
It is true that complications of bradycardia lead to the eventual death of patient.

Q: In the cause of septicemia in the patient was the sole cause of previous road traffic accident resulting in quadraplegia?
Ans: Quadraplegia can cause septicemia.

I am not aware of condition of patient before road traffic accident. I have no idea of condition of patient before her last admission. I have no idea as to on what kind of support she was before last admission.

Q. How condition of quadraplegia results in septicemia shock after 4 years?
Ans: Quadraplegia results in septicemia and septicemia results in septicemia shock.

Q. What is the condition of quadraplegia and how it affects the patients body?
Ans: Quadraplegia means there are no movements of upper limb and lower limb of patient.

Q: What is the meaning of Thrombocytopenia?
Ans- It means decrease in platelets.

Q: Can you relate quadraplegia to Thrombocytopenia?
Ans: Quadraplegia causes septicemia and septicemia causes Thrombocytopenia.

For any death arising out of complications of road traffic accident or unnatural death, conducting postmortem report is mandatory. I have no idea whether in this case PM was done or not. It is not correct to say that there is no nexus between death of deceased and accidental injuries."

The cross-examination of AW-5 brings out clearly the following:-

a) AW-5 categorically states that quadriplegia causes septicemia.

b) He reaches to such conclusion independently on the basis of his diagnosis of the deceased original claimant.

c) He would state that quadriplegia would mean there are no movements of upper and lower limb of the patient.

d) He would state that quadriplegia results in septicemia and the latter results in septicemia shock.

e) According to him, it is true that complications of bradycardia lead to the eventual death of the patient.

f) He would also state that quadriplegia causes septicemia and septicemia causes thrombocytopenia.

g) According to him, it is not correct to say that there is no nexus between the death of the deceased and the accidental injuries i.e. such nexus does medically exist as per the evidence of AW-5.

We may observe that the evidence of AW-5 who has been elaborately cross examined in detail on behalf of the appellant has gone uncontroverted and remains unassailed. Thus the contents of such testimony are duly proved against the appellant. It is clear to us that Dr. Sondeo categorically suggests that the deceased died because of ailment existing prior to the accident i.e. hypothyroidism causing bradycardia leading to the eventual death of the deceased original claimant. We have also perused the death certificate issued by AW-5 i.e. Dr. Sondeo Bansal, the treating doctor of the deceased original claimant. Such certificate is issued by the Metro Multispeciality Hospital, Jaipur, Rajasthan. A careful perusal of the death certificate would indicate the immediate cause to be septicemia and antecedent cause which gives rise to the immediate cause is stated to be traumatic quadriplegia.

Such death certificate is issued by the same doctor i.e. AW-5 whose evidence is uncontroverted and is also not disputed, much less controverted by the appellant. Thus, we do not find substance in the submission of Mr. Kanojia that there is no nexus between the injury and death of the deceased original claimant in the given facts and circumstances.

28. Testing the above on the basis of the findings recorded by the MACT in the impugned judgment we have carefully perused the same (paragraph 24 to 30) on such issue. We find that the MACT has correctly recorded the sequence of events i.e. right from her being taken to the Kokilaben Hospital after the accident to her demise in Metro Hospital Jaipur on 17 January 2017 where she passed away under complete and continuous treatment since the date of the accident. The MACT has rightly appreciated that AW-1 i.e. the father of the deceased original claimant has deposed that due to accident injuries the deceased was completely paralyzed and bedridden, which despite cross-examination by the appellant, remained unshaken. Such evidence is corroborated by the unassailed testimony/evidence of AW-5 i.e. Dr. Sondeo Bansal. This is further corroborated by the death certificate issued by the same doctor stating the reason for death as traumatic quadriplegia which is directly connected to the injuries suffered by the deceased original claimant, as stated by him in his evidence which completes the chain.

29. We find that the MACT has committed no error in noting that the mention of the deceased original claimant's quadriplegic condition is not challenged

or denied in the cross-examination of AW-5, which remains unimpeached/unassailed. As noted above, the nexus between the accidental injuries and death can also be borne out from the discharge summary/certificate dated 29 June 2012 issued by the Kokilaben Hospital at Mumbai and the death certificate issued by the treating doctor of the deceased original claimant at Jaipur, Rajasthan. The reasons as recorded in both these documents are similar i.e. the quadriplegic condition of the deceased original applicant being attributed to cervical spinal-cord injuries that she sustained after the accident, which ultimately resulted in her demise.

30. Further, the MACT rightly takes into consideration the fact that the deceased had suffered cervical spinal-cord injuries with neurological level of C4. We may gainfully refer to the medical definition of quadriplegia from medical dictionary of health terms by **Harvard Health Publishing, Harvard Medical School which is "paralysis of all limbs, often caused by a severe neck injury"**. Since the spinal-cord co-ordinates body movement and sensation, an injured spinal-cord loses ability to send and receive messages from the brain to the body's system that controls sensory, motor and autonomic function. It is the cervical level injury that causes paralysis. The same happened with the deceased in the instant case i.e. a condition of quadriplegia where she lost all her limbs as deposed by Dr. Sondeo in his evidence due to the cervical-cord injury which is corroborated by the discharge certificate/summary dated 29 June 2012 issued by the Kokilaben Hospital and not disputed by the appellants.

31. Further, Dr. Sondeo in his evidence during cross-examination has also deposed that quadriplegia would cause septicemia and has correctly taken note of such uncontroverted evidence of the said doctor which as noted earlier is unassailed by the appellant. For such reasons as discussed above, we find no reason to disbelieve the uncontroverted testimony of Dr. Sondeo that quadriplegia causes septicemia and septicemia causes thrombocytopenia. The condition of quadriplegia and septicemia as the cause of death are corroborated in the death certificate dated 17 January 2017 which is again not disputed by the appellant.

32. In the given facts and circumstances we may also note that under Section 45 of the Evidence Act, one need not ordinarily go behind the evidence of an expert witness like that of a doctor/hospital in the given facts and circumstances. The connection between the injuries suffered by the deceased original claimant, which stand out clear from the discharge certificate issued by the Kokilaben Hospital dated 29 June 2012 is corroborated by the evidence of Dr. Bansal and the death certificate issued by him and the cause of death have not just a remote but a proximate connection. For such reasons, we do not find any infirmity much less irregularity and/or illegality in the findings arrived at in the impugned order on this issue which, in the given facts and circumstances stand duly proved against the appellant and in favour of the respondents.

33. It is in the above backdrop that we may now turn to the issues framed in the impugned judgment i.e. at page 19. As far as the first issue is concerned for the reasons recorded above, we are in complete agreement with the findings and conclusions arrived at in the impugned judgment to the effect that there does exist a nexus between the accidental injuries and death of the deceased original claimant. As far as issue No.2 is concerned, we may note that Mr. Kanojia has not pressed the said issue relating to the appellant proving that the claim is bad for non-joinder of the necessary party i.e. the owner and insurer of the auto rickshaw in which the deceased was travelling. Be that as it may. On a careful perusal of the impugned judgment we find no reason to interfere in the finding arrived by the MACT in this regard as it suffers from no irregularity much less illegality warranting any interference.

34. Further, issue No.3 relates to whether the appellant proved that the driver/owner i.e. the ensured of the offending vehicle committed breach of the terms and conditions of the insurance policy. We may observe that this was also not pressed by Mr. Kanojia. In our view, as correctly observed in the impugned judgment, we find that the medical certificate which is on record of the driver of the offending vehicle would only show that "breath of the driver gave only smell of the alcohol". It was not marked in the cross-examination of DW-1 i.e. the Deputy Manager of the appellant insurance company. Hence, there was no evidence to prove that the driver of the offending vehicle consumed alcohol. The appellant also could not place on record any details regarding the percentage/concentration of

alcohol in milligrams per 100 milliliters of blood of the driver. Therefore, it is a clear case where the appellant has failed to prove that the driver of the offending vehicle in a drunk and/or intoxicated state and therefore the owner of the offending vehicle did not commit any breach of the conditions of the insurance policy as alleged by the appellant. Thus, even on this ground as rightly concluded in the impugned judgment, the appellant cannot wriggle out of the insurance policy to ultimately deprive the respondents of the compensation that they legally deserve in the peculiar facts and circumstances of the case.

35. On the penultimate issue of quantification of compensation to the respondents, we find that the impugned judgment has taken into due consideration the monthly income of the deceased original applicant, which is not disputed by the appellant as was stated in the application dated 10 June 2014 filed before the MACT. We find that the MACT has applied the correct criteria of justifiable multiplier to be 17 as set out in the impugned judgment. At this juncture, we may refer to a judgment of the Supreme Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**[3], where the Supreme Court has, inter alia, held that M-17 is to be applied for age group 26 to 30 years. Thus, in the given facts and circumstances, the age of the deceased original claimant admittedly being 28 at the relevant time, we find no irregularity much less illegality committed by the MACT in its impugned judgment in this regard.

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36. In our view, the MACT by the impugned judgment has applied its mind thoroughly to the various factual nuisances, material before it on record and supported the same by decided cases of various Courts. We find no irregularities much less illegality in such approach when the impugned judgment is delivered after fully hearing the parties, considering the documents/evidence on record and applying the law to the facts in hand with support of the applicable judicial precedents. We do not find that the appellant has distinguished the judgment cited before the MACT in support of its findings. In our view, there is no perversity, much less irregularity let alone illegality to warrant any intervention in the impugned judgment dated 27 November 2020 of the MACT.

37. We may observe that as noted supra it is well settled that Motor Vehicles Act is a beneficial piece of legislation and while dealing with compensation cases, once the actual occurrence of accident has been established, the Tribunal's role would be to award just and fair compensation as held by the Supreme Court in the case of **Rajwati @ Rajjo & Ors.** (supra). We intend to apply the same principles, benchmark and parameters in upholding the order of compensation having come to the conclusion that there is no dispute with regard to the occurrence of the said accident. We are in complete agreement with the applicability of the said judgment to the effect that the standard of proof to be borne in mind must be a preponderance of probability and not strict standard of proof beyond all reasonable doubts which is following in criminal cases. Accordingly, in our view, the MACT is

justified in awarding compensation to the respondents on such legally settled principle of preponderance of probability that will fully apply in the given facts and circumstances.

38. As noted by us earlier, we cannot overlook the fundamental right guaranteed under Article 21 which would embrace the right to live a healthy life with dignity. As held by the Supreme Court in several cases including the recent one in ***Atul Tiwari Vs. Regional Manager, Oriental Insurance Co. Ltd.***[4] that money cannot substitute a life loss, but an effort has to be made for grant of compensation so far as money can compensate basis for assisment for all damages for personal injury is compensation. Perfect compensation is hardly possible, but fair compensation ought to be the norm. Each case has to be decided in light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. Adverting to these principles, we are of the view that in the given facts and circumstances, the least that can be done to serve the ends of justice is to uphold the grant of compensation of Rs.62,20,000/- to the family of the deceased who did not deserve the life that she went through after the accident leading to the final sacrifice of her life, as fate/destiny would want it to be.

39. In light of the foregoing discussion, we find no reason to disagree or depart from the impugned judgment of the MACT dated 27 November 2020 awarding a sum of Rs.62,20,000/- as compensation to the respondents on the

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demise of the deceased original claimant. We accordingly pass the following order:-

ORDER

i. Appeal is dismissed.

ii. The registry of MACT/competent cfficer is directed to remit the decretal amount of compensation with accrued interest @7.5% per annum until date of payment of such amount to the respondents, subject to and after considering the withdrawal of amount, if any, by the respondents.

iii. The Registrar (Judicial-II) shall also forward a copy of this order to the Registrar, MACT within a period of one week from the date it is uploaded to enable the Registrar, MACT and/or competent officer to disburse such amount along with accrued interest, to the respondents and credit the same directly to their bank accounts, within a period of two weeks from date of receipt of this order.

40. In light of the dismissal of the appeal, nothing survives in the pending interim application, which is also disposed of.

[ADVAIT M. SETHNA, J.] [G. S. KULKARNI, J.]