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APHC010653022012



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3520]

FRIDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT**THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA****MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 4089/2012****Between:**

1.NITTALA RAVINDRA, S/O. LAKSHMI NARASIMHAM, JUNIOR
SUPERINTENDENT CENTRAL WARE HOUSING CORPORATION,
R/O. D.NO. 1-58-6/4, FCI COLONY, TADEPALLIGUDEM, WEST
GODAVARI DISTRICT.

...APPELLANT**AND**

1.KOLUSU APPANNA, S/O. DHARMA RAO, DRIVER OF VEHICLE
BARING NO. AP 28 V5249, C/O. ASDARSHA SCHOOL, D.NO. 40-20-1,
DANAVAIPERTA, RAJAHMUNDRY, EAST GODAVARI DISTRICT.

2.ADARSHA EDUCATIONAL SOCIETY, REP. BY ITS
CORRESPONDENT SRINIVASA REDDY, OWNER OF SCHOOL VAN
AP 28 V 5249, D.NO. 80-33-5,A.V.APPA RAO ROAD, SRINIVASA
NAGAR, RAJAHMUNDRY, EAST GODAVARI DISTRICT.

3.SHRIRAM GENERAL INSURANCE CO LTD, REP. BY ITS MANAGING
DIRECTOR, JAIPURE, RAJASTHAN STATE.

4.SHRIRAM GENERAL INSURANCE CO LTD, REP. BY ITS BRANCH

MANAGER, RAJAHMUNDRY, EAST GODAVARI DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to

IA NO: 1 OF 2012(MACMAMP 8291 OF 2012

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to receive the proceedings of Regional Manager, Central Warehousing Corporation, Vide No. CWC/HYD/I-Med. Advance/Admn/10829 dated 20-11-2012 as Addl. evidence by marking the same as Ex A-16 in MVOP No. 195 of 2010 on the file of the Court of the Motor Accident Claims Tribunal-Cum District Judge, East Godavari District, Rajahmundry and pass

Counsel for the Appellant:

1. T V JAGGI REDDY

Counsel for the Respondent(S):

1.

2. GUDI SRINIVASU

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 4090/2012

Between:

1. N.V.N. PAVAN KUMAR, S/O. N.RAVINDRA R/O. 1-58-6/4, FCI COLONY, TADEPALLIGUDEM, WEST GODAVARI DISTRICT.

...APPELLANT

AND

1. KOLUSU APPANNA 3 OTHERS, S/O. DHARMA RAO, DRIVER OF VEHICLE BEARING NO. AP 28V5249. C/O. ADARSHA SCHOOL, D.NO. 40-20-1, DANAVAIPERTA, RAJAHMUNDRY, EAST GODAVARI DISTRICT.

2.ADARSHA EDUCATIONAL SOCIETY, REP. BY ITS CORRESPONDENT SRINIVASA REDDY, OWNER OF SCHOOL VAN AP 28V5249, D.NO. 80-33-5, A.V. APPA RAO ROAD, SRINIVASA NAGAR, RAJAHMUNDRY, EAST GODAVARI DISTRICT.

3.SHRIRAM GENERAL INSURANCE CO LTD, REP.BY ITS MANAGING DIRECTOR, JAIPURE, RAJASTHAN STATE.

4.SHRIRAM GENERAL INSURANCE CO LTD, REP. BY ITS BRANCH MANAGER, RAJAHMUNDRY, EAST GODAVARI DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to

IA NO: 1 OF 2012(MACMAMP 8292 OF 2012

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to receive the documents (1) Discharge Summary issued by Dr. R.Bhaskar Chowdary of Pex Hospital, Rajahmundry, (2) the cash/Credit bill dated 5-8-2012 (3) Medical Bills 8 in Number and (4) Order of Appointment dated 10-2-2009 issued by Assurgent Technology Solution Pvt. Ltd as Addl. Evidence by Marking them as Exs A-17 to A-20 in OP No. 157 of 2011 on the file of the Court of the Motor Vehilce Accidents Claims Tribunal (District Judge) at Rajahmundry and pass

Counsel for the Appellant:

1.T V JAGGI REDDY

Counsel for the Respondent(S):

1.GUDI SRINIVASU

2..

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2473/2014

Between:

1. SHRIRAM GENERAL INSURANCE COMPANY LTD., & ANOTHER,
REP. BY ITS,MANAGING DIRECTOR, JAIPUR, RAJASTAN
2. SHRIRAM GENERAL INSURANCE CO. LTD.,, REP. BY ITS BRANCH
MANAGER, RAJAHMUNDRY.

...APPELLANT(S)

AND

1. NITTALA RAVINDRA 2 OTHERS, S/O. LAKSHMI NARASIMHAM,
JUNIOR SUPERINTENDENT IN CENTRAL WARE HOUSING
CORPORATION, RAJAHMUNDRY.
2. KOLUSU APANNA, S/O. DHARMA RAO, DRIVER OF ADARSHA
SCHOOL VAN BEARING NO. AP 28 V 5249, D.NO. 40-20-1
DHANVAIPETA, RAJAHMUNDRY, EAST GODAVARI DISTRICT.
3. ADARSHA EDUCATIONAL SOCIETY, REP. BY ITS
CORRESPONDENT SREENIVAS REDDY, OWNER OF SCHOOL VAN
BEARING NO. AP 28 V 5249, D.NO. 80-33-5A.V.A. ROAD, SRENIVASA
NAGAR, RAJAHMUNDRY, E.G. DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to

IA NO: 1 OF 2013(MACMAMP 2030 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 90 days in presenting the above appeal filed against the order and decree dated 6-8-2012 made in OP No. 195 of 2010 on the file of on the file of before The Chairman, Motor Accidents Claims Tribunal (District Judge) at Rajahmundry pending disposal of MACMA and to pass

IA NO: 2 OF 2013(MACMAMP 2123 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant interim stay of execution of the order and decree dt. 06/08/2012 made in

OP.no. 195 of 2010 on the file of before the Chairman, MACT (District Judge) at Rajahmundry pending disposal of the MACMA

IA NO: 3 OF 2013(MACMAMP 5664 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the order passed in M.A.C.M.A.M.P.No.2123 of 2013 in M.A.C.M.A.SR.No.14137 of 2013 dt.12-04-2013

Counsel for the Appellant(S):

1.GUDI SRINIVASU

Counsel for the Respondent(S):

1.T V JAGGI REDDY

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.Nos.4089 and 4090 of 2012 & 2473 of 2014

COMMON JUDGMENT:

Introductory:

1. M.A.C.M.A.No.4089 of 2012 and M.A.C.M.A.No.2473 of 2014 are directed against the decree and judgment passed in M.V.O.P.No.195 of 2010 and M.A.C.M.A.No.4090 of 2012 is directed against the decree and judgment passed in M.V.O.P.No.157 of 2011.
2. Both M.V.O.P.Nos.195 of 2010 and 157 of 2011 were disposed under common judgment by the District Judge-cum-Chairman, Motor Vehicles Accidents Claims Tribunal at Rajahmundry (for short “the learned MACT”).
3. One Nittala Ravindra is the claimant in M.V.O.P.No.195 of 2010 and N.V.N. Pavan Kumar is the claimant in M.V.O.P.No.157 of 2011. Both of them claimed compensation for the injuries sustained by them. The accident referred in both cases is arising out of the same incident.
4. Dissatisfied with the quantum of compensation granted, Nittala Ravindra, the claimant in M.V.O.P.No.195 of 2010, filed M.A.C.M.A.No.4089 of 2012 and N.V.N. Pavan Kumar, the claimant in M.V.O.P.No.157 of 2011, filed M.A.C.M.A.No.4090 of 2012, seeking enhancement.

5. Respondent Nos.3 and 4 before the learned MACT in M.V.O.P.No.195 of 2011 filed M.A.C.M.A.No.2473 of 2014 disputing the quantum of compensation awarded.

6. All the three appeals are pertaining to the same accident and the awards and decrees questioned were made under common judgment by the learned MACT. Therefore, all the three appeals were heard together and are being considered together and hence the common judgment.

Details:

Sl. No.	Appeal No. / M.A.C. M.A.No.	Appellant	Connected M.V.O.P. No.	Status of appellant before the MACT	Status of respondents before the MACT	Compensation claimed (in Rs.)	Compensation awarded (in Rs.)
1.	4089 of 2012	Nittala Ravindra	195 of 2010	Petitioner	1.Kolusu Appanna-Driver of the School Van / vehicle. (remained <i>ex parte</i>) 2.Adarsha Educational Society- Represented by its correspondent-Owner of the School Van / Vehicle. (remained <i>ex parte</i>) 3.Shriram General Insurance Company Limited-Rajasthan 4.Shriram General Insurance Company Limited-Rajahmundry (remained <i>ex parte</i>)	15,18,325/-	3,87,794/-
2.	2473 of 2014	1.Shriram General Insurance Company Limited-Rajasthan	195 of 2010	Respondent Nos.3 and 4	1.Nittala Ravindra –P.W.1 2.Kolusu Aparna –Driver of the School Van 3.Adarsha Educational Society-Owner of the school van		

		2.Shriram General Insurance Company Limited- Rajahmund ry					
3.	4090 2012	of N.V.N. Pavan Kumar	157 2011	of Petitioner	1.Kolusu Appanna-Driver of the vehicle 2.Adarsha Educational Society- Represented by its correspondent-Owner of the School Van / Vehicle 3.Shriram General Insurance Company Limited-Rajasthan 4.Shriram General Insurance Company Limited-Rajahmundry	17,34,187/-	1,02,000/-

7. For the sake of convenience, the parties will be hereinafter referred to as the claimants and the Respondents as and how they are arrayed in the impugned proceedings.

Case of the claimants:

8(i). Petitioner in M.V.O.P.No.195 of 2010 is the father. The petitioner in M.V.O.P.No.157 of 2011 is the son. They were travelling on motor cycle / scooter bearing No.AP 05 BA 4155 from Kakinada to Rajahmundry.

(ii). On the fateful day i.e. on 16.02.2009, whey they were near Housing Board Colony, Way Bridge, Lalacheruvu, Rajahmundry a School Van bearing No.AP 28 V 5249 (hereinafter referred to as “the offending vehicle”) belonging to Adarsha Educational Society, arrayed as Respondent No.2 before the

learned MACT, came in a opposite direction, driven by its driver arrayed as Respondent No.1 before the learned MACT and dashed the scooter, whereby the accident occurred.

9. A case in Crime No.30 of 2009 was registered at Bommuru Police Station against the driver of the offending vehicle and he was subsequently charge-sheeted.

10. On account of the accident, the scooter was damaged and the father lost his gold chain and suffered seven injuries. Further, his son also suffered seven injuries. They were taken to Swatantra Hospital, but on the advice of the doctor, due to seriousness of injuries, the petitioners were taken to Abhaya Hospital and from there to Apex Emergency Hospital. The father was treated as an inpatient till 20.03.2009 and underwent two surgeries for the injuries to both hands, legs and hips. Cerebral edema was found on brain scan. Treatment was taken from neurosurgeon and jaundice developed due to the accident. In all, the father incurred an expenditure of Rs.3,00,325/- for the treatment and he has become disabled and unable to attend duties and even unable to walk as he was earlier doing. He require hand stick to attend calls of nature etc. and he was forced to go on leave. The son was unable to attend employment and lost his earning power and salary and he is unable to attend normal duties.

11. The negligence was disputed by Respondent No.1 in the written statement filed in M.V.O.P.No.157 of 2011.

Case of the Respondent-Insurance Company in both cases:

12. The father and son have to prove that the rider of the scooter had driving licence. The owner and Insurance Company of the scooter should have been added as parties. The compensation claimed is excessive. There is violation of the conditions of policy for want of driving licence to the driver of the offending vehicle (School van / bus). Therefore, Respondent No.4 is not liable. The accident occurred due to negligence of the son and in any event, the claimants are not entitled for any compensation.

Issues:

13. Issues settled by the learned MACT in both cases are as follows:

- 1) Whether the petitioner Nittala Ravindra (O.P.No.195 of 2010) / V.N. Pavan Kumar Nittala (O.P.No.157 of 20/11) sustained injuries in the road accident on 16.02.2009? If so, whether the accident occurred due to rash and negligent driving of van bearing registration No.AP28V 5249 by the Driver?*
- 2) Whether the petitioner is entitled for compensation?*
- 3) Whether the respondents 1 to 4 are liable to pay compensation, if any the petitioners are entitled?*

Evidence:

14. Evidence adduced before the learned MACT in both cases is as follows:

	Description	Remarks
Oral evidence	P.W.1: Nittala Ravindra	Petitioner in M.V.O.P.No.195 of 2010.
	P.W.2: Nittala Venkata Naga Pavan Kumar	Petitioner in M.V.O.P.No.157 of 2011.
	P.W.3: Dr. Karri Srinivas	Consulting Orthopaedic Surgeon in Apex Hospital.
	P.W.4: Dr. Y. Sudarshanam	Consultant in Apex Hospital.
Documentary evidence	Ex.A1: Attested copy of intimation of accident, dated 06.02.2009 Ex.A2: Attested copy of wound certificate, dated 07.04.2009. Ex.A3: Certified copy of FIR in Cr.No.30/09 of Bommuru Police Station, dated 16.02.2009. Ex.A4: Statement of complaint of NVNP Kumar, dated 16.02.2009. Ex.A5: Attested copy of Rough sketch of scene of offence, dated 17.02.2009. Ex.A6: Certified copy of charge sheet, dated 07.04.2009. Ex.A7: Bunch of medical bills (83 in number) for Rs.3,00,325/-. Ex.A8: Attested copy of X Ray films (6 in number) Ex.A9: Bunch of medical bills (83 in number) for Rs.3,21,387/- Ex.A10: X-Ray films 6 in number Ex.A11: Disability certificate of NVN Pavan Kumar. Ex.A12: Disability certificate of N. Ravindra Ex.A13: Discharge summary Ex.A14: Sanction order issued by	On behalf of the petitioner(s).

	Central Ware Housing corporation. Ex.A15: Salary certificate issued by Central Ware Housing Corporation. Ex.X1: Case sheet Ex.X2: Attested copy of wound certificate of NVN Pavan Kumar Ex.X3: Certified copy of case sheet in O.S.157/11	
	Ex.B1: Certified true copy of Insurance Policy	On behalf of Respondent No.3.

Findings of the learned MACT:

(A). Negligence:

15. The learned MACT believed that the negligence was on the part of the driver of the offending vehicle / Respondent No.1.

(B). Quantification:

16. By referring to the evidence, the learned MACT quantified the entitlement of the father (P.W.1) for compensation at Rs.3,87,794/- as against the claim made for Rs.15,18,325/- and the entitlement of the son (P.W.2) for compensation at Rs.1,02,000/- as against the claim made for Rs.17,34,187/-.

(i) Entitlement of father / petitioner in M.V.O.P.No.195 of 2010:

Sl.No.	Head	Amount
1.	Loss of medical leave and part loss of earnings	Rs.2,59,794/-
2.	Mental agony, pain and suffering	Rs.1,22,000/-

3.	Transport to hospital	Rs.6,000/-
	Total	Rs.3,87,794/-

(ii) Entitlement of son / petitioner in M.V.O.P.No.157 of 2011:

Sl.No.	Head	Amount
1.	Mental agony	Rs.85,000/-
2.	Medical expenses	Rs.10,000/-
3.	Transport expenses	Rs.6,000/-
	Total	Rs.1,02,000/-

(c) Liability:

17. While fixing the liability, referring to the negligence of the driver of the offending vehicle / Respondent No.1 and that the vehicle belongs to Respondent No.2 and the contractual liability of Respondent No.3 and also failure of the Insurance Company / Respondent No.3 to prove violation, the learned MACT fixed the liability on all the respondents jointly and severally.

18. Heard Sri T.V. Jaggi Reddy, learned counsel for the claimants and Sri Gudi Srinivasu, learned counsel for the Insurance Company.

Arguments in the appeal:

For the claimants:

19. Learned counsel for the claimants would submit that the learned MACT failed to properly appreciate the medical evidence indicating the treatment

undergone as well as the disability suffered by the claimants. The reasoning for quantifying the compensation is not rational.

For the respondents:

20. Per contra, the learned counsel for the Insurance Company submitted that the learned MACT ought to have considered that it is a case of head-on collision between two vehicles. Therefore, the contribution of negligence by the rider of the scooter cannot be ignored and the compensation amount arrived at shall be scaled down accordingly. Further, he has also submitted that total negligence can be attributing to the scooter alone and that the Insurance Company is entitled for exoneration from the liability.

Technical aspects & scope of appeals:

21. The Insurance Company is pursuing only one appeal in respect of M.V.O.P.No.195 of 2010, while admittedly withdrawn another appeal *vide* M.A.C.M.A.No.2475 of 2014, although two claims are decided in respect of the same accident and when the defences are the same in respect of both claims, particularly with regard to liability, either from the point of violation or from the point of want of negligence on the part of the driver of the offending vehicle, it is also pertinent to note that both matters were decided by the same Court under the common judgment.

22. When one appeal is not pressed and in respect of the issue relating to negligence and liability having been discussed and addressed under the common judgment, it is deemed that the objections relating to liability are no

longer remain for contest and the only contested issue is quantification of compensation and it is just and adequate nature.

Points for consideration in appeals:

23. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides. The points that arise for determination in this appeal are:

- 1) Whether the compensation of Rs.3,87,794/- awarded in favour of the father viz., the claimant in M.V.O.P.No.195 of 2010 and the compensation of Rs.1,02,000/- awarded in favour of the son, claimant in M.V.O.P.No.157 of 2011, are just and reasonable or require any enhancement, if so, to what extent?
- 2) What is the result of the appeal in M.A.C.M.A.No.4089 of 2012?
- 3) What is the result of the appeal in M.A.C.M.A.No.2473 of 2014?
- 4) What is the result of the appeal in M.A.C.M.A.No.4090 of 2012?

Point No.1:

Analysis, reasoning and findings:

24. The father / petitioner in M.V.O.P.No.195 of 2010 as P.W.1 claimed that he has suffered the following injuries:

1. Black eye present, CT scan taken cerebral anima present.
2. Swelling and tenderness above the right shoulder, X-Ray show fracture of neck of right humorous.

3. Swelling and tenderness and abnormal mobility over fore arm in its 1/3rd with lacerated injury of $2 \times \frac{1}{2} \times$ bone deep on the radial aspect of the fore arm, X-ray shows fracture of both bones.

4. Swelling and tenderness over right hip movements are painful and restricted, X-ray shows fracture trochanter of femur on right side.

5. Swelling deformity of right neck with lacerated injury $1 \times \frac{1}{2} \times$ bone deep over upper 1/3rd, X-ray shows communicated fracture of both bones of right leg.

6. Tenderness of crepus over left clavity, X-Ray shows fracture on clavity.

7. Lacerated injury $\frac{1}{2} \times \frac{1}{2} \times$ skin deep over the right nostril.

25. The son / petitioner in M.V.O.P.No.157 of 2011 as P.W.2 claimed that he has suffered the following injuries:

1. Swelling tenderness over tight hip and movements painful and restricted.

2. Lacerated injury of $4 \times 2\frac{1}{2} \times \frac{1}{2}$ over the anterior aspect of right leg. X-Ray shows no bony injury;

3. Lacerated injury $1 \times \frac{1}{2} \times \frac{1}{2}$ over the anterior aspect of the right leg.

4. Pain and tenderness over middle 1/3rd of the left leg. X-ray shows fracture of both bones over left leg in its middle 1/3rd.

5. Swelling tenderness and deformity over left fore arm in its middle 1/3rd.

6. A lacerated injury $1 \times \frac{1}{2} \times \frac{1}{2}$ over the lateral aspect of lower $\frac{1}{3}$ rd of right upper arm. X-Ray shows fracture of right humerus.

7. Swelling deformity over right fore arm. X-Ray shows fracture of both bones of right fore arm.

26. Apart from referring to the injuries, both petitioners in both cases claimed about the disability and difficulties faced by them post-accident.

27(i). Evidence of PW.3, Dr. Karri Srinivas, Consulting Orthopaedic Surgeon in Apex Hospital, stated that he attended the patient / petitioner and Apex Hospital issued Ex.A2 wound certificate. Ex.A2-wound certificate is pertaining to the father / Nittala Ravindra. The injuries reflected in wound certificate are corroborating the injuries pleaded.

(ii). P.W.3 further stated that he attended P.W.1 on 16.02.2009 and P.W.1 was admitted with multiple injuries. They are, fracture of the right humerus, comminuted fracture both bones right forearm, fracture right trochanter, comminuted fracture of both bones of the right leg and fracture of the left cavity.

(iii). Surgery was performed on 25.02.2009 and 06.03.2009 in the form of open reduction internal fixation was done for the fracture of the right humerus, fracture both bones of the right fore arm, fracture of right trochanter and fracture of both bones of the right leg. Fracture of the right clavicle and re-fracture of the left leg were treated conservatively.

(iv). During treatment, the patient developed jaundice and was managed medically. P.W.1 was discharged on 23.03.2009 with advice to attend follow-up treatment.

(v). The petitioner P.W.1 requires another operation for removal of implants. He along with a neurosurgeon attended P.W.1.

(vi). He has issued disability certificates dated 13.06.2011 after, examining the injured persons.

(vii). Ex.A11 and Ex.A12 are the disability certificates. He has admitted during cross examination that the District Medical Board is competent to issue disability certificates.

28(i). P.W.4, Y. Sudarshanam, Consultant in Apex Hospital has stated that he examined the father / Nittala Ravindra (petitioner in M.V.O.P.No.195 of 2010) and found the injuries stated above. The injuries referred by him are corresponding to the injuries pleaded. He has also stated that he has examined the son / P.W.2 (petitioner in M.V.O.P.No.157 of 2011) and found the injuries stated above.

(ii). According to the opinion of P.W.4, injury Nos.4 to 7 are grievous in nature and injury Nos.1 to 3 are simple in nature.

(iii). Ex.A7 medical bills issued by the Apex Hospital. Ex.X3 is the case sheet maintained in the Hospital. Ex.A10 prescriptions are issued by the Doctor in

Apex Hospital. Ex.A10 was not issued by P.W.4. During cross-examination, he has stated that he is a Medico-Legal consultant in '13' hospitals in Rajahmundry. Except for the wound certificate, he did not know about the other / physical condition of the patient after treatment.

29. From the evidence of P.W.3 and P.W.4, it is clear that both the son and the father / the petitioners in respective cases suffered grievous and simple injuries and undergone treatment.

30. With regard to the son / claimant in M.V.O.P.No.157 of 2011, the learned MACT quantified the compensation at Rs.20,000/- for each grievous injury i.e. Injury Nos.4 to 7 (Rs.80,000/-) and Rs.2,000/- for each simple injury i.e. Injury Nos.1 to 3 (Rs.6,000/-), totaling Rs.86,000/-. With respect to medical bills, for want of P.W.3 and P.W.4 speaking about them, awarded only Rs.10,000/- in lump sum. With regard to transportation, Rs.6,000/- was awarded.

31. With regard to the father / the claimant in M.V.O.P.No.195 of 2010, the learned MACT disallowed the medical bills on the ground of reimbursement while allowing the claim for medical leave and partial loss of earnings on account of medical leave.

32. In respect of both claimants, for want of certification of disability by the Medical Board, no disability was considered and no amount was granted.

Precedential Guidance:

33. A reference to parameters, for quantifying the compensation under various heads, addressed by the Hon'ble Apex Court is found necessary, to have standard base in the process of quantifying the compensation, to which the claimant is entitled.

(i) With regard to awarding just and reasonable quantum of compensation, the Hon'ble Supreme Court in ***Baby Sakshi Greola vs. Manzoor Ahmad Simon and Anr.***¹, arising out of SLP(c).No.10996 of 2018 on 11.12.2024, considered the scope and powers of the Tribunal in awarding just and reasonable compensation within the meaning of Act, after marshaling entire case law, more particularly with reference to the earlier observations of the Hon'ble Supreme Court made in ***Kajal V. Jagadish Chand and Ors.***², referred to various heads under which, compensation can be awarded, in injuries cases vide paragraph No.52, the heads are as follows:-

S. No.	Head	Amount (In ₹)
1.	Medicines and Medical Treatment	xxxxx
2.	Loss of Earning Capacity due to Disability	xxxxx
3.	Pain and Suffering	xxxxx
4.	Future Treatment	xxxxx
5.	Attendant Charges	xxxxx
6.	Loss of Amenities of Life	xxxxx
7.	Loss of Future Prospect	xxxxx
8.	Special Education Expenditure	xxxxx
9.	Conveyance and Special Diet	xxxxx
10.	Loss of Marriage Prospects	xxxxx
	Total	Rs. ...xxxxxx

¹2025 AIAR (Civil) 1

²2020 (04) SCC 413

(ii). Hon'ble Apex Court in **Yadava Kumar Vs. Divisional Manager, National Insurance Company Limited and Anr.**,³ vide para No.10, by referring to **Sunil Kumar Vs. Ram Singh Gaud**⁴, as to application of multiplier method in case of injuries while calculating loss of future earnings, in para 16 referring to **Hardeo Kaur Vs. Rajasthan State Transport Corporation**⁵, as to fixing of quantum of compensation with liberal approach, valuing the life and limb of individual in generous scale, in para 17 observed that :-

“The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation.”

(iii). In **Rajkumar Vs. Ajay Kumar and Another**⁶, the Hon'ble Apex Court summarized principles to be followed in the process of quantifying the compensation after referring to socio economic and practical aspects from which, the claimants come and the practical difficulties, the parties may face in the process of getting disability assessed and getting all certificates from either

³ 2010(10) SCC 341

⁴ 2007 (14) SCC 61

⁵ 1992(2) SCC 567

⁶ 2011 (1) SCC 343

the Doctors, who treated, or from the medical boards etc. principles summarized *vide para No.19* are as follows:

19. *We may now summarise the principles discussed above:*

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

(iv) In ***Sidram vs. United India Insurance Company Ltd. and Anr.***⁷

vide para No.40, the Hon'ble Apex Court referred to the general principles relating to compensation in injury cases and assessment of future loss of earning due to permanent disability by referring to ***Rajkumar's*** case, and also

⁷ 2023 (3) SCC 439

various heads under which compensation can be awarded to a victim of a motor vehicle accident.

(v) In **Sidram's** case, reference is made to a case in **R.D. Hattangadi V. Pest Control (India) (P) Ltd.**⁸. From the observations made therein, it can be understood that while fixing amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But, all these elements have to be viewed with objective standards. In assessing damages, the Court must exclude all considerations of matter which rest in awarding speculation or fancy, though conjecture to some extent is inevitable.

Reasoning:

34. No doubt, the disability certificate was not issued by the Medical Board, but the doctor who treated and attended the patient / claimants has issued the disability certificate, spoke about the same. Then, the person contradicting this has to adduce some evidence. Of course, the disputing party can rely on the cross-examination.

35. During cross-examination, P.W.3 admitted that there is a Medical Board to assess the disability. However, whether the disability stated by P.W.3 can't be completely disregarded is an important question. What can be the basis for acceptance of particular rate is the next question.

⁸ 1995 (1) SCC 551

36. The difficulties of the parties in adducing evidence have to be kept in view, particularly in getting the doctors and placing their evidence and also in approaching the Medical Board for certification etc. is at another point. This has been discussed by the Hon'ble Supreme Court in the case ***Rajkumar Vs. Ajay Kumar and Another*** (6 supra).

37. The guidance of the Hon'ble Supreme Court in respect of entertaining accident claims would indicate that one cannot make a fortune or misfortune. At the same time, there cannot be any prejudice or there cannot be a faulty payment of compensation for eyewash purpose. Neither there can be windfall nor a mere eyewash attempt. What is contemplated is just and reasonable compensation.

38. From the evidence on record and findings of the learned MACT, the following things are clear.

- 1) Both claimants suffered an accident.
- 2) Both suffered seven injuries.
- 3) Both were hospitalized.
- 4) The petitioner in M.V.O.P.No.195 of 2010 / father was in hospital from 16.02.2009 to 23.03.2009.
- 5) The petitioner in M.V.O.P.No.195 of 2010 / father undergone operation.
- 6) The doctor stated that further operation is necessary in respect of the father / the petitioner in M.V.O.P.No.195 of 2010.

7) There is no appeal in respect of the compensation awarded to the son / petitioner in M.V.O.P.No.157 of 2011, but the son is also seeking enhancement.

8) The disability stated by doctor, as per the certificate, is at 60% for the father and 50% for the son.

9) The reasons were not stated by the doctor is the observation of the learned MACT.

39. Except suggesting that there is a Medical Board and that the disability certificates are not valid, nothing more is elicited during the cross-examination of P.W.3. The doctor who assessed the disability is an orthopedic surgeon who attended the petitioner. Therefore, the evidence cannot be completely brushed aside with regard to disability. At least notionally, some reasonable amount can be awarded, keeping in view the nature of evidence under the respective heads.

40. Reasonable amounts should have been awarded for Pain and suffering, transportation and future medical etc. needs for P.W.1 / father (Petitioner in M.V.O.P.No.195 of 2010), although denial of medical expenditure incurred is convincing in view of reimbursement.

41. In the compensation amount of Rs.3,87,794/- awarded to the father, Rs.2,59,794/- was awarded towards loss of medical leave and part loss of earnings, balance is hardly at Rs.1,28,000/-. With regard to transportation, attendant charges, future medical needs and discomfort due to the disability

suffered, although the same might not have resulted in loss of employment leading to complete functional disability affecting income, the discomfort the claimants may have to face in the remaining life require empathetical consideration and the same is found missing in the impugned orders.

42. In the light of precedential guidance and in view of the reasons and evidence referred above, the entitlement of the claimants for reasonable compensation in comparison to compensation awarded by the learned MACT is as follows:

Sl. No.	Head	Case Nos. (M.V.O.P.Nos. / M.A.C.M.A.Nos.)			
		M.V.O.P.No. 195 of 2010	M.A.C.M.A. No.4089 of 2012	M.V.O.P.No. 157 of 2011	M.A.C.M.A. No.4090 of 2012
1.	Loss of medical leave and part loss of earnings	Rs.2,59,794/-	Rs.2,59,794/-	Rs.10,000/- (in respect of medical expenses only)	Rs.25,000/-
2.	Mental agony, pain and suffering (7 injuries)	Rs.1,22,000/-	Rs.2,00,000/- (Surgeries and fractures)	Rs.86,000/- (in respect of mental agony only)	Rs.1,20,000/- (Three simple injuries and three grievous injuries)
3.	Transport to hospital / Transport expenses	Rs.6,000/-	Rs.25,000/-	Rs.6,000/-	Rs.25,000/-
4.	Future Treatment / medical needs	-Nil-	Rs.75,000/-	-Nil-	Rs.10,000/-
5.	Attendant charges	-Nil-	Rs.10,000/-	-Nil-	Rs.10,000/-

6.	Loss of amenities of life	-Nil-	Rs.15,000/-	-Nil-	Rs.25,000/-
7.	Disability	-Nil-	Rs.2,00,000/-	-Nil-	Rs.1,00,000/-
8.	Special diet.	-Nil-	Rs.20,000/-	-Nil-	Rs.20,000/-
	Total:	<i>Rs.3,87,794/-</i>	Rs.8,04,794/-	<i>Rs.1,02,000/-</i>	Rs.3,35,000/-

43. In view of the discussion made above claimants are entitled for compensation *vide* M.V.O.P.No.195 of 2010 and M.V.O.P.No.157 of 2011 at Rs.3,87,794/- and Rs.1,02,000/- respectively is modified and enhanced to Rs.8,04,794/- and Rs.3,35,000/- respectively. Consequently, the appeal filed by the Insurance Company *vide* M.A.C.M.A.No.2473 of 2014 is liable to be dismissed. Therefore, the Point No.1 is answered accordingly.

Point Nos.2 to 4:

44. For the aforesaid reasons and in view of the findings under point No.1, Point Nos.2 to 4 are answered as follows:

In the result,

[i] M.A.C.M.A.No.4089 of 2012:

- (i) The appeal is partly allowed.
- (ii) Compensation awarded by the learned MACT in M.V.O.P.No.195 of 2010 at Rs.3,87,794/- with interest at the rate of 7.5% per annum is modified to Rs.8,04,794/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

- (iii) Respondent Nos.3 and 4 before the learned MACT are liable to pay the compensation amount in view of the Insurance Policy.
- (iv) Time for payment / deposit of balance amount is two months
- (v) If the claimant furnished the bank account number, the Insurance Company may deposit the amount directly in the bank account of the claimant and file the necessary proof thereof before the learned MACT.
- (vi) If the Insurance Company deposits the amount, the claimant is entitled to withdraw the amount at once on deposit.
- (vii) There shall be no order as to costs, in the appeal.

[ii] M.A.C.M.A.No.2473 of 2014:

- (i) The appeal is dismissed.
- (ii) There shall be no order as to costs, in the appeal.

[iii] M.A.C.M.A.No.4090 of 2012:

- (i) The appeal is partly allowed.
- (ii) Compensation awarded by the learned MACT in M.V.O.P.No.157 of 2011 at Rs.1,02,000/- with interest at the rate of 7.5% per annum is modified to Rs.3,35,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.
- (iii) Respondent Nos.3 and 4 before the learned MACT are liable to pay the compensation amount in view of the Insurance Policy.
- (iv) Time for payment / deposit of balance amount is two months

- (v) If the claimant furnished the bank account number, the Insurance Company may deposit the amount directly in the bank account of the claimant and file the necessary proof thereof before the learned MACT.
- (vi) If the Insurance Company deposits the amount, the claimant is entitled to withdraw the amount at once on deposit.
- (vii) There shall be no order as to costs, in the appeal.

45. As a sequel, miscellaneous petitions, if any, pending in the appeals shall stand closed.

A. HARI HARANADHA SARMA, J

Date: 05.12.2025
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HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A Nos.4089 and 4090 of 2012 & 2473 of 2014

5th December, 2025

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