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APHC010550792012



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

[3520]

THURSDAY, THE SEVENTH DAY OF MAY
 TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2193/2012

Between:

1. ICICI LOMBARD GENERAL INSURANCE CO. LTD.,, REP. BY ITS
 MANAGER, ICICI BANK TOWERS, 4TH FLOOR, EAST WING WALL
 STREET PLAZA, 1-11-256, STREET NO.1, BEGUMPET,
 HYDERABAD.

...APPELLANT

AND

1. KAKARA JAYAKRISHNA SWAMY, S/O. SURI BABU STUDENT
 KARAPA, KARAPA MANDAL, KAKINADA (BEING MINOR REP. BY
 HIS FATHER AND GUARDIAN KAKARA SURIBABU)

2. VAJJI PRASAD, S/O. CHALLAIAH DRIVER OF TRIPPER
 INDRAPALEM, KAKINADA RURAL MANDAL,

3. M/S SRI ENGINEERING CONTRACTORS, REP. BY B. NAGESWARA
 RAO, D.NO. 54-18-43, NEAR ITI MIDHILA NAGAR, VIJAYAWADA.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court

IA NO: 1 OF 2009(MACMAMP 1598 OF 2009

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 610 days occurred in filing the appeal against the decree and judgment in MVOp No. 523/2004 dt. 30.03.2007, on the file of learned Chairman, Motor Accidents Claims Tribunal-cum-III Addl. District Judge, Kakinada and pass

IA NO: 2 OF 2009(MACMAMP 1762 OF 2009

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

Counsel for the Appellant:

1.GUDI SRINIVASU

Counsel for the Respondent(S):

1.OBULDASS M

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**M.A.C.M.A.No.2193 of 2012****JUDGMENT:****Introductory:**

The respondent No.3 before the Court of the III Additional District Judge-cum-Motor Accidents Claims Tribunal, Kakinada (*for short "the learned MACT"*), in M.V.O.P.No.523 of 2004 filed the present appeal, questioning the liability imposed and quantum of compensation awarded under the decree and order dated 30.03.2007.

2. The 1st respondent herein is the claimant/petitioner, (*being minor represented by his father and next friend*) before the learned MACT. The 2nd respondent is the driver of the Tipper lorry bearing No. AP 16 V 3043 [*hereinafter referred as 'the offending vehicle'*] and the 3rd respondent herein is the owner of the offending vehicle.

3. For the sake of convenience, parties will be herein after referred as the claimant/petitioner and the respondents as and how they are arrayed before the learned MACT.

Case of the claimant/petitioner:-

4. [i] On the fateful day i.e., on 05.04.2004, the petitioner/injured (minor) while returning from the house of his grandfather situated at Ramakanchinagar and proceeding to Karapa village, met with an accident near Durgamma temple, where the offending vehicle, owned by the 2nd

respondent, driven by the 1st respondent came from behind and hit him. Thereby, the petitioner sustained multiple injuries and he was shifted to Government General Hospital, Kakinada, undergone treatment for a period of (3) month, undergone surgery to his left thigh and skin grafting was done. Six months bed rest was advised.

[ii] A case in Crime No. 31 of 2004 under Section 338 of IPC was registered against the driver of the offending vehicle.

[iii] The petitioner incurred heavy expenditure for the treatment. The 1st respondent being driver, the 2nd respondent being owner of the offending vehicle and as the 3rd respondent, with which the offending vehicle was insured, all the respondents are liable to pay the compensation of Rs.2,00,000/-.

Case of the 2nd respondent/Owner:-

5. Negligence of the petitioner is the cause for the accident and the respondents are not liable.

Case of the 3rd respondent/Insurance Company:-

6. Contention of the 3rd respondent is that the petitioner is not entitled for any compensation. In any event, the claim is excessive. Negligence of the petitioner is the cause for the accident.

Evidence:-

7. [i] During enquiry, father of the petitioner was examined as PW1. One Dr. P.V. Sudhakar, who treated the petitioner, was examined as PW2 and the eyewitness, one N.Venkata Subbaro, was examined as PW3.

[ii] The petitioner has relied on the documentary evidence Ex.A1- FIR, Ex.A2 - wound certificate, Ex.A3- bunch of medical bills for Rs.10,576/-, Ex.A4-Discharge Summary, Ex.A5 - Medical Certificate, Ex.A6- bunch of medical bills for Rs.1,479/-. Ex.X1 -case sheet with X-ray film of the injured and Ex.X2 -Discharge summary from Government General Hospital, Kakinada.

[iii] No evidence is adduced for the respondents.

Findings of the learned MACT:-

8. [i] Relying on the evidence of PW.1 and the eye witness- PW.3, learned MACT believed the accident, negligence of the driver of the offending vehicle and found that the respondents are liable to pay compensation.

[ii] By relying on the evidence of PW2, Doctor who treated the claim- petitioner and also nature of the injuries, period of treatment, medical expenditure evidenced by the bills- Ex.A3 and Ex.A6, considering nature of injuries and the treatment etc., awarded compensation of Rs.1,46,000/- in all, making the respondents 2 and 3 jointly and severally liable to pay the compensation.

9. Questioning the liability imposed and the compensation awarded, present appeal is filed by the 3rd respondent.

Arguments in the appeal:

For the appellant/Insurance Company/3rd respondent:-

10. [i] Learned MACT ought to have seen that there is no fracture injury and disability to the petitioner.

[ii] Learned MACT ought to have seen that the petitioner/injured himself was negligent.

[iii] Compensation awarded under various heads, particularly for the disfigurement at Rs.75,000/- is exorbitant and the compensation awarded in all Rs.1,46,000/- is excessive.

[iv] Liability to be scaled down.

For the claimant:-

11. Learned MACT has properly considered the negligence and also the evidence of the Doctor as well as the medical record etc., interference by way of enhancement is necessary in view of the tender age of the petitioner. The appeal is liable to be dismissed, however, enhancing the compensation, awarded.

12. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides.

13. The points that arose for determination in this appeal are –

- 1) Whether the liability imposed and compensation of Rs.1,46,000/- awarded by the learned MACT under the impugned order and decree dated 30.03.2007 are proper ? Or require any interference? If so, on what grounds and to which extent?
- 2) What is the result of the appeal?

Point No.1:-

Negligence and liability etc. :-

14. Appellant- Insurance Company is disputing both liability and the quantum of compensation. While disputing the liability, the appellant attributed negligence to the petitioner. Apparently the stand of the Insurance Company is not tenable as no evidence is adduced on behalf of the appellant. When the version of an eye witness – PW.3 speaking about the negligence of the offending vehicle and when nothing important is elicited from the cross-examination of PW.3 as to motive for him to speak false and when there is no oath against oath, the evidence adduced on behalf of the petitioner becomes acceptable. PW3 is a chance witness but nothing strange is found to disbelieve his testimony.

15. It is clear from the law and settled practice that any claim made for compensation in terms of Motor Vehicles Act, the record maintained by the Police in discharge of their official findings can be relied on. In the context

of objections, it is also relevant to note that the appreciation of evidence in answering the question of fact as to negligence in a motor accident claim, learned MACT can rely on the official records adopting the theory of probability with a holistic approach. This approach stands fortified with the aid of provisions of Motor Vehicles Act and the Rules and also the observations of the Hon'ble Apex Court, as follows:

16 (i). As per Section 176 of the Motor Vehicles Act, the State Governments are entitled to make rules for the purpose of carrying effect to the provisions of the Motor Vehicles Act.

(ii). In relation to claims before the learned MACT, Rule 455 to Rule 476 of the A.P. Motor Vehicles Rules, 1989, vide Chapter No.11 provides comprehensive guidance. As per Rule 476 of the A.P. Motor Vehicles Rules, 1989, the claims Tribunal shall proceed to award the claim basing on the registration certificate of the vehicle, Insurance Policy, copy of FIR and Post-mortem certificate etc.

17. As per Rule 476 of the A.P. Motor Vehicles Rules, 1989, the crime record can be the basis. The official acts done are presumed to be proper until a contrary is proved particularly when some statutory recognition is given to such official records.

18. It is relevant to note that in view of the summary nature and mode of enquiry contemplated under Motor Vehicles Act and social welfare nature of legislation the Tribunal shall have holistic view with reference to facts and

circumstances of each case. It is sufficient if there is probability. The principle of standard of proof, beyond reasonable doubt cannot be applied while considering a claim seeking compensation for the death or the injury on account of road accident. The touch stone of the case, the claimants shall have to establish is preponderance of probability only. The legal position to this extent is settled and consistent.

19. The Hon'ble Apex Court in ***Bimla Devi and others Vs. Himachal Road Transport Corporation***¹, in para 15 observed as follows:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties..”

20. In the light of the above discussion, the findings of the learned MACT as to fixing the liability on the respondents No. 2 and 3, particularly on the appellant, does not warrant any interference.

Quantum of compensation:

21. [i] With regard to quantum of compensation, learned MACT has considered the medical bills covered by Ex.A3 standing to a tune of

¹ 2009 (13) SCC 530

Rs.10,517/-, Ex.A6- bunch of medical bills standing to a tune of Rs.1,417/- and discharge summary indicating the date of admission from 05.04.04 to 22.05.2004 covered under Ex.A4; medical certificate covered by Ex.A5 as to the period of treatment undergone from 15.07.2006 to 17.09.2006 and also the evidence of PW3. Ex.A2 -wound certificate is reflecting two injuries described as grievous. The evidence of Doctor-PW2, who treated the petitioner and Exs.X1 and X2 also will lend strength to the claim of the petitioner.

[ii] PW.2 is working as Professor, Plastic Surgery department in Rangraya Medical College, Kakinada. He deposed that, on 05.04.2004 at about 18.04 hours, the petitioner was admitted in the hospital with degloving injury of left lower limb from thigh to ankle. Operation was conducted on 05.04.2004 and on 22.05.2004. Ex.X1 and Ex.X2 are relating to the petitioner. First surgery done on 05.04.2004 could not give proper result. Hence, second surgery was conducted on 24.05.2005. The petitioner required further surgery for correcting deformity, of left lower limb. For correcting deformity, the third surgery was also done by PW2. PW2 identified the petitioner before the Court and stated that there is permanent disfigurement of lower limb. Further, surgery for foot drop on the left side was advised. Except suggesting that there was mistake in first surgery nothing elicited from the cross-examination of PW.2 to doubt the evidence of PW2.

Precedential Guidance:

22. 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.***², 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 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.***³, 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

²2025 AIAR (Civil) 1

³2020 (04) SCC 413

(ii). Hon'ble Apex Court in ***Yadava Kumar Vs. Divisional Manager, National Insurance Company Limited and Anr.***,⁴ vide para No.10, by referring to ***Sunil Kumar Vs. Ram Singh Gaud***⁵, 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***⁶, 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***⁷, 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

⁴2010(10)SCC 341

⁵2007 (14) SCC 61

⁶1992(2) SCC 567

⁷2011 (1) SCC 343

either 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.***⁸ *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 various heads under which compensation can be awarded to a victim of a motor vehicle accident.

⁸ 2023 (3) SCC 439

(v) In **Sidram's** case, reference is made to a case in **R.D. Hattangadi V. Pest Control (India) (P) Ltd.**⁹. 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.

23. The disability neither specifically pleaded nor shown with proper evidence. Therefore, awarding compensation under the head of permanent disability is not possible. However, under the head of disfigurement, the claimant is entitled for reasonable compensation notionally. The compensation awarded under some heads requires modification and under some more heads compensation can be awarded.

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

⁹ 1995 (1) SCC 551

Sl. No.	Head	Granted by the learned MACT	Fixed by this Appellate Court
1.	Pain and suffering	Rs.50,000/-	Rs.50,000/-
2.	Transportation	-Nil-	Rs.10,000/-
3.	Medical expenditure/treatment	Rs.11,000/-	Rs.15,000/-
4.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
5.	Attendant charges		Rs.10,000/-
6.	For the complete disfigurement caused to the left lower limb	Rs.75,000/-	Rs.50,000/-
7.	Loss of amenities and enjoyment of life	-Nil-	Rs.25,000/-
	Total:	Rs.1,46,000/-	Rs.1,70,000/-

25. For the reasons aforesaid and in view of the discussion made above, the point framed is answered in favour of the claimant, concluding that the claimant is entitled for compensation of Rs.1,70,000/- with interest @7.5%p.a. and the order and decree dated 30.03.2007 passed by the learned MACT in M.V.O.P.No.523 of 2004 require modification accordingly.

26. Awarding compensation to the claimant even in the absence of any appeal or cross objections by the claimant require examination.

Enhancement of compensation in the absence of appeal by the claimant:

27 (i). The legal position as to powers of the Appellate Court particularly while dealing with an appeal in terms of Section 173 of the Motor

Vehicles Act, 1988, where the award passed by the learned MACT under challenge at the instance of the Insurance Company (respondents) and bar or prohibition if any to enhance the quantum of compensation and awarding just and reasonable compensation, even in the absence of any appeal or cross objections was considered by the Division Bench of this Court in a case between ***National Insurance Company Limited vs. E. Suseelamma and others***¹⁰ in M.A.C.M.A. No.945 of 2013, while answering point No.3 framed therein vide, para 50 of the judgment, which reads as follows:

“50. In our considered view, the claimant/respondents are entitled for just compensation and if on the face of the award or even in the light of the evidence on record, and keeping in view the settled legal position regarding the claimants being entitled to just compensation and it also being the statutory duty of the Court/Tribunal to award just compensation, this Court in the exercise of the appellate powers can enhance the amount of compensation even in the absence of appeal or cross-objection by the claimants.”

(ii). Observations made by the Division Bench of this Court in ***National Insurance Company Limited vs. E. Suseelamma and others*** (5 supra) case are in compliance with the observations of Hon’ble Apex Court in ***Surekha and Others vs. Santosh and Others***¹¹.

(iii). In ***Surekha and Others vs. Santosh and Others*** (6 supra) case, in Civil Appeal No.476 of 2020 vide judgment dated 21.01.2020, three judges of the Hon’ble Supreme Court observed that “it is well stated that in the

¹⁰ 2023 SCC Online AP 1725

¹¹ (2021) 16 SCC 467

matter of Insurance claim compensation in reference to the motor accident, the Court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants". While addressing a case where the High Court has declined to grant enhancement on the ground that the claimants fail to file cross appeal above observations are made.

Point No.2:

28. In the result, **the appeal is dismissed.**

- (i) However, **compensation awarded by the learned MACT** in M.V.O.P.No.523 of 2004 at Rs.1,46,000/- with interest at the rate of 7.5% per annum **is modified and enhanced to Rs.1,70,000/- with interest at the rate of 7.5% per annum** from the date of petition till the date of realization.
- (ii) Respondent Nos.2 and 3 are jointly and severally liable. However, Respondent No.3/ Insurance Company is liable in view of the Insurance Policy.
- (iii) Time for payment/deposit of the balance amount is two (2) months.
 - (a) If the petitioner/claimant furnishes the bank account number within (15) days from today, Respondents No.3/ Insurance Company/appellant shall deposit the amount directly into the

bank account of the petitioner/ claimant and file the necessary proof before the learned MACT.

(b) If the petitioner/claimant fails to comply with (iii)(a) above, Respondent No.3/Insurance Company shall deposit the amount before the learned MACT and the petitioner/claimant is entitled to withdraw the amount at once on deposit.

(iv) There shall be no order as to costs in the appeal.

29. As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

A. HARI HARANADHA SARMA, J

Date: 07.05.2026

Pnr

THE HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.2193 of 2012

07.05.2026

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