2026:BHC-AS:16882

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.34194 OF 2016

The HDFC ERGO Gen. Ins. Co.Limited Appellant

versus

1. Mast.Siddanth Sanjay Jamsandekar,
Age 12 years, Mr.Sanjay M.Jamsandekar,
next friend discharged as er order dtd.22-12-2015
R/o.Jamseth Tadiwala Chawl, R.No.3,
Curry Road, Mumbai-400 012.
2. Kalpnath Hariharanyan Mishra,
Owner of Taxi No.MH-01-X-4050
Municipal Chawl, Hut No.5775, Sewree,
Mumbai-400 015. Respondents

Mr.Abhijit P.Kulkarni with Ms.Sweta Shah for Appellant.

Ms.Varsha Chavan for Respondent no.1.

CORAM: AARTI SATHE, J.
DATE: 7th April 2026

ORAL JUDGMENT :-

1. This appeal challenges the judgment and award dated 12th April 2016 (hereinafter referred to as the "impugned judgment and award") passed by the Motor Accident Claims Tribunal, Mumbai (hereinafter referred to as "MACT") whereby the Respondent No.1 Claimant has been awarded an amount of Rs. 76,611/- including No-Fault Liability (NFL) amount if any along with interest at 9% per annum from the date of filing of MACT application till its realization.

2. Brief facts of the case are as follows: -

i. On 30th December 2009, at about 07:10 a.m., Respondent No.1 Claimant who was then a child of 12 years, was walking by the side of Dr. B.A. Road, Mumbai, when a speeding motor taxi bearing MH-01-X-4050 (hereinafter referred to as "offending vehicle") knocked him down. Respondent No.1 Claimant sustained injuries, and it is the contention of Respondent No.1 Claimant, that the

accident occurred due to the rashness and negligence of the driver of the offending vehicle. The offending vehicle is owned by Respondent No.2, one Mr. Kalpanath Hariharanayan Mishra.

ii. The Respondent No.1 Claimant was required to spend considerable amount for treatment, and it is his contention that he lost one academic year because of the injuries sustained by him in the accident. It is also his contention that the disability sustained by him due to the injuries caused by the accident, affected the prospects of his future earnings. An FIR bearing no. 332 of 2009, was filed before the Bhoiwada Police Station on the basis of complaint made by Respondent No.1, Claimant's Father, who was not a witness to the accident. Consequently, Respondent No.1 Claimant filed an application bearing no. 547 of 2010 before the MACT claiming compensation amount towards the injuries faced by the Respondent No.1 Claimant on account of the accident.

iii. The impugned judgment and award were passed in the aforesaid application in favour of Respondent No.1 Claimant, awarding a sum of Rs. 76,611/- including NFL, if any, along with interest at 9% per annum from the date of filing of the application before the MACT till its realization. By the impugned judgment and award, the Appellant Company and Respondent No.2 were jointly and severally made liable to make the payment of the aforesaid amount.

3. It is in the backdrop of the above facts that I proceed to decide the present appeal.

4. Learned Counsel Mr. Abhijit Kulkarni along with Ms. Sweta Singh appeared on behalf of the Appellant Company. Learned counsel Ms. Varsha Chavan appeared on behalf of the Respondent No. 1 Claimant.

5. Heard learned counsel on behalf of the parties. Learned counsel appearing on behalf of the Appellant Company submitted that the impugned judgment and award have been passed without appreciating the facts and the quantum of compensation which has been awarded by way of the aforesaid impugned judgment and award is excessive and arbitrary. The submissions made by learned counsel for the Appellant Company are summarized as follows:

i) It was contended that the impugned judgment, and award has

erroneously held that the Respondent No.1 Claimant was entitled to Rs. 76,611/- along with interest at the rate of 9% per annum without appreciating the fact that the insurance policy itself was fake and bogus and that the Appellant Company had led evidence to prove the same.

ii) It was further contended that the MACT had erred in rejecting the computer printouts of the premium register which was submitted before MACT to show that the policy was not issued by the Appellant Company, on the ground that the same was not proved by Section 65B of the Indian Evidence Act. It was also submitted that the format of the policy which the Respondent No.1 Claimant had tendered and that which has been issued by the Appellant Company were not the same and to that effect the employee of the Appellant Company, one Mr. Sachin had deposed that the said policy was fake and bogus. It was submitted that the said Mr. Sachin categorically pointed out the format policy and explained how the policy as issued by the Appellant Company was different from the one submitted by Respondent No.-Claimant.

iii) It was further submitted that the technical aspect of the issuance of the policy i.e. the format in which it has to be issued and the number of the policy was not considered by the MACT and this by itself was an error which was committed by the MACT while passing the impugned order. Further, the MACT did not take into consideration that a police complaint was filed on 01st August 2014, specifically complaining about the forgery of the said insurance policy. In view thereof, learned Counsel on behalf of the Appellant Company, submitted that the MACT had erred in holding that the Respondent No.1 Claimant was entitled to compensation of Rs. 40,000/- for pain and suffering and further Rs. 5000/- for special diet and conveyance only on the oral testimony and witnesses without there being any document produced before the MACT.

iv) The owner of offending vehicle i.e. Respondent No.2 did not come forward to defend the claim and hence the Learned Counsel on behalf of the Appellant Company submitted that they were not liable to pay compensation as the policy relied upon by the Respondent No.1 Claimant was bogus and fake. In view of the aforesaid submissions, the Learned Counsel on behalf of the Appellant

Company submitted that the impugned judgment and award be set aside and the appeal be allowed. It is pertinent to note that, at the time of proceedings before the MACT, the Respondent No.2, who was the owner of the offending vehicle did not appear, and the impugned judgment and award was passed ex-parte vis-à-vis him.

6. *Per contra*, learned counsel on behalf of the Respondent No.1 Claimant submitted that the impugned judgment and award passed by the MACT is a well-reasoned award and did not suffer from infirmity, and therefore needed to be upheld. It was the submission of Learned Counsel for Respondent No.1 Claimant that the claim amount of Rs. 76,611/- given by the MACT was correct and justifiable in the facts of the present case. She has further submitted that no FIR was filed against the person who has used the fake policy. It was also her submission that the Appellant Company had not filed a certificate under Section 65B of the Indian Evidence Act in respect of the printouts which the Appellant Company seeks to rely upon in respect of the policy for the period 01st April 2009 to 30th August 2009. Since, these printouts which were tendered were electronic evidence, the same has to be properly proved and certified under Section 65B of the Indian Evidence Act, and the same was not done by the Appellant Company. She has sought to place reliance on the decision of the Supreme Court in the case of **Arjun Panditrao Khotkar Vs. Kailash K Gorantyal**[1] to support her aforesaid contention. In view of the aforesaid submissions, the Learned Counsel on behalf of the Respondent No.1 Claimant, submitted that the MACT had rightly appreciated the facts and evidence on record, and awarded the correct compensation to the Respondent No.1 Claimant.

7. I have gone through the records, impugned judgment and award and also considered the submissions made by the learned counsel for Appellant Company and Respondent No.1, and I am of the view that the impugned judgment and award is a well-reasoned judgment passed by the MACT. I come to the said conclusion/decision on the basis of the following reasons: -

i) The MACT, has in the impugned judgment and award recorded that the accident occurred due to the rashness and negligence of the driver of the

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1 AIR OnLine-2020-SC-641

offending vehicle bearing no. MH-01-X-4050 and this finding has been recorded on the basis of the deposition of the Respondent No.1 Claimant, who was a major when the MACT passed the impugned judgment and award. On the basis of the deposition made by the Respondent No.1 Claimant, the MACT rightly came to the conclusion that the offending vehicle came from behind where the Respondent No.1 Claimant was walking on the road which had no pavement and the driver of the offending vehicle did not take care to swerve on the right side and keep safe distance from the Respondent No.1 Claimant an drive safely.

ii) The MACT also held that at the time of accident, the Respondent No.1 Claimant was only 12 years of age, and no negligence could be attributed to him. Further, there was no evidence which was brought on record before the MACT to show that the Respondent No.1 Claimant was in anyway responsible for the accident and the MACT rightly came to the finding that the accident was caused by the offending vehicle and not on account of negligence of Respondent No.1 Claimant.

iii) The MACT also on the basis of appreciation of evidence led before it rightly came to the conclusion that the Appellant Company had not adduced any evidence to establish that the driver of the offending vehicle was not holding any valid and effective driving license at the time of the accident. In view thereof, the finding of accident being caused by the rash driving of the driver of the offending vehicle could not be effectively displaced by the Appellant Company before the MACT.

iv) Insofar as the compensation of Rs. 76,611/- awarded to the Respondent No.1 Claimant is concerned, the MACT on the basis of appreciation of the discharge summary of the hospital papers, held that the said paper showed that the Respondent No.1 Claimant had suffered polytrauma. The Respondent No.1 Claimant was treated at Corporation hospital and was required to purchase medicines and had tendered receipts regarding payment of hospitalization charges and tendered receipts regarding purchase of medicine. The total amount mentioned in the receipts was to the tune of Rs. 6,611/- and therefore the MACT on the aforesaid receipts awarded the aforesaid compensation towards treatment

expenses.

v) Further, the MACT also awarded a compensation of Rs. 5000/- towards special diet and Rs. 5000/- for expenses on conveyance to go to the Hospital, on the ground that the Respondent No.1 Claimant had suffered injuries to his internal organs, fracture injury and injury to ear. It was on the basis of these injuries that the MACT came to a conclusion that the Respondent No.1 Claimant would have spent money for taking nourishing diet and also for conveyance for attending hospital during OPD treatment on multiple occasions. This finding of the MACT, to my mind is a correct finding and based on a proper appreciation of facts and cannot be faulted with. Considering that the Respondent No.1 Claimant, was a minor at the time of the accident and had suffered injuries and trauma, the MACT rightly awarded the aforesaid expenses towards special diet and conveyance to visit the hospital to treat the injuries suffered.

8. The Supreme Court in **Chaus Taushif Alimiya etc. vs. Memon Mahmmad Umar Anwarbhai and Ors.**[2] has awarded expenses towards special diet, transportation, pain and suffering considering the medical condition of the Appellants. The relevant paragraphs of the judgment are reproduced below: -

> **23. Both the appellants, considering their medical conditions, would be requiring special diet supplements which may be assessed at Rs. 1,00,000/- each. In this connection, reference may be made to the judgment of this Court dated 18.10.2022 passed in Civil Appeal No.7605 of 2022 between Divya vs. The National Insurance Co. Ltd. & Anr.**
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> **24. The compensation, thus, due and admissible to the appellants as discussed above may be summarized hereunder:**
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> **Appellant-Alimiya:**

Sr. No	Heads	Amount
1.	Future Medical Expenses (including physiotherapy)	Rs.9,72,000/- (-Rs.3,00,000/) =Rs.6,72,000/-
2.	Transportation charges	Rs.50,000/- (-10,000/-) = Rs. 40,000/-
3.	Pain and suffering	Rs.5,00,000/- (-Rs.1,25,000/) =Rs.3,75,000/-

2 (2023) 17 SCC 771

4.	Loss of marriage prospects	Rs. 3,00,000/-
5.	Attendant charges	Rs.10,80,000/-
6.	**Special diet and nourishment charges**	**Rs. 1,00,000/-**

25. Thus, we award additional sum of Rs. 25,67,000/- to the appellant Alimiya along with the same interest as awarded by the High Court.

Appellant-Sokat:

Sr. No	**Heads**	**Amount**
1.	Future Medical Expenses	Rs. 50,000/-
2.	Transportation charges	Rs.25,000/- (Rs.10,000/) Rs. 15,000/-
3.	Pain and suffering	Rs.2,50,00/- (-Rs.75,000/-) =Rs.1,75,000/-
4.	Loss of marriage prospects	Rs. 1,50,000/-
5.	Attendant charges	Rs.10,80,000/-
6.	**Special diet and nourishment charges**	**Rs. 1,00,000/-**

9. Further, the MACT has rightly awarded a compensation of Rs. 40000/- towards pain and suffering and Rs. 20000/- towards temporary loss of amenities of life, considering that the Respondent No.1 Claimant had suffered polytrauma and had also suffered injuries to his internal organs and fractures which had caused him severe pain. This Court also cannot ignore the fact that at the time when the accident had taken place, the Respondent No.1 Claimant was of a tender age of 12 years and hence these injuries would have had a serious impact on the physical and the mental well-being of the Respondent No.1 Claimant at that time. I do not see any error on the part of the MACT to compensate the Respondent No.1 Claimant for the pain and suffering he had gone through as a result of the aforesaid accident and I am also of the view that the same is not an exorbitant compensation which the MACT has sought to award to the Respondent No.1 Claimant.

10. Insofar as the contention of the Appellant Company, that the Appellant Company was not liable to pay the compensation as the policy relied upon by the Respondent No.1 Claimant was a bogus and fake policy, the MACT has rightly rejected this contention of the Appellant Company by holding that the policy which the Appellant Company was seeking to rely upon was a policy of the year

2014-2015 and the policy tendered by the Respondent No.1 Claimant was of 2010-2011. The rather flimsy argument/contention raised by the Appellant Company before the MACT and even before this Court that, the format of the policy which was tendered by the Respondent No.1 Claimant and that which was given by the employee of the Appellant Company is different does not impress this Court and does not go to prove that the policy was a bogus or fake policy. This particularly in view of the fact that the policies were for different periods and hence this argument deserves to be rejected at this very threshold. I am also inclined to accept the submission made on behalf of the Respondent No.1 Claimant and as rightly held by the MACT, that the printouts of the premium register for the period 01st April 2009 to 30th August 2009, which the Appellant Company sought to rely upon to show that the policy was not issued by them were primarily electronic evidence not supported by the relevant certificate as mandated under Section 65B of the Indian Evidence Act.

11. In view of the aforesaid, once the relevant certificate for the electronic evidence as mandated under Section 65B of the Indian Evidence Act were not submitted, the same could not be admissible evidence to support the contention of the Appellant that the policy was not issued by the Appellant. This view now stands settled in the Supreme Court decision in Arjun Panditrao Khotkar (supra) where it has been held that a certificate under Section 65B(4) of the Indian Evidence Act is a condition precedent to the admissibility of evidence by way of electronic record and secondary evidence is admissible only if led in the manner stated and not otherwise. The relevant paragraph of Arjun Panditrao Khotkar (supra) is reproduced below:

> "61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V., and incorrectly "clarified" in Shafhi Mohammad. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor, which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose."

12. Further, I am in agreement with the view taken by the MACT, that if the insurer had not lodged an FIR against the person who has used fake policy, it cannot escape the lability to pay compensation. Even otherwise, the MACT on the basis of the policy submitted by the Respondent No.1 Claimant has categorically held that the said policy certificate bears all the details required to make the Appellant Company liable to pay compensation to the Respondent No.1 Claimant. The said policy certificate bears the registration number of the offending vehicle, make of the vehicle, engine number, chassis number, year of manufacturing, declared value, capacity, premium, total amount of premium and bifurcation of the premium, etc. There is nothing on record which has been adduced by the Appellant Company to disprove the above details and to show that the offending vehicle was not insured with the Appellant Company.

13. I am also of the view that the interest rate of 9% per annum has been rightly awarded by the MACT by relying on the bank rates prevalent for interests which are awarded on fixed deposits. In view thereof, the interest rate is correct. Also considering that the Appellant Company is a large insurance company, the rate of 9% is justified.

14. In view thereof, the Appeal filed by the Appellant Company is dismissed. Respondent No.1 Claimant is at liberty to withdraw the amount awarded by way of the impugned judgment and award along with interest deposited by the Appellant Company with the MACT as well as with this Court, along with accrued interest from the date of application till date of realization. Further, if the amount is not deposited in the MACT or this Court, then the Appellant Company shall pay the amount within a period of three weeks from the date of uploading of this order, as awarded by the impugned judgment and award along with interest at the rate of 9% per annum from the date of application till the date of realization.

15. Appeal dismissed. No costs.

(AARTI SATHE, J.)