

APHC010500172011



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

[3520]

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

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1180/2011

Between:

1. CH. UDAYA BHASKAR, VIZ., S/O. LATE SANYASAPPA, R/
GAJULAREGA, VIZIANAGARAM

...APPELLANT

AND

1. K APPA RAO PALAKONDA 2 OTS, S/O. LATE BODAYYA, DRIVER OF
APSRTC, BUS BEARING NO. AP 11 Z 4660, R/O. PALAKONDA

2. APSRTC REP BY ITS DEPOT MANAGER, APSRTC, PALAKONDA.

3. APSRTC REP BY ITS GENERAL MANAGER, APSRTC,
MUSHEERABAD, HYDERABAD.

...RESPONDENT(S):

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

IA NO: 2 OF 2011(MACMAMP 21469 OF 2011)

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. G SAI NARAYANA RAO

Counsel for the Respondent(S):

1. ARUN KUMAR LATHKER(SC FOR APSRTC)
- 2.

APHC010100802012



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

[3520]

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

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1223/2012

Between:

1. APSRTC, & ANOTHER, REP. BY ITS DEPOT MANAGER,
PALAKONDA, VIZIANAGARAM DISTRICT.
2. A.P.S.R.T.C., REP. BY ITS MANAGING DIRECTOR BUS BHAVAN AT
MUSHEERABAD, HYDERABAD

...APPELLANT(S)

AND

1. CH UDAYA BHASKAR ANOTHER, S/O LATE SANYASAPPA R/O
GAJULA REGA, VIZIANAGARAM
2. K APPA RAO, S/O LATE BODAYYA DRIVER OF APSRTC,
PALAKONDA DEPOT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to allow the appeal (MACMA) by setting aside the order and Decree dt. 19-2-2011 passed by the MACT Cum Judge, Family Court Cum Additional District and Sessions Judge, Vizianagaram and pass

IA NO: 1 OF 2011(MACMAMP 2298 OF 2011)

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 19 days in filing of the above appeal against the Decree dt. 19-2-2011 passed in MVOP No. 330 of 2007 on the file of the Motor Accidents (Claims Tribunal (Judge, Family Court Cum Additional District & Sessions Judge, Vizianagaram) and pass

IA NO: 2 OF 2011(MACMAMP 2419 OF 2011)

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 stay all further proceedings including execution of the decree dated 19-2-2011 passed in MV OPNo. 330/2007 on the file of the Motor Accidents Claims Tribunal (Judge, Family Court-cum-Additional District & Sessions Judge, Vizianagaram pending disposal of the above appeal and to pass

Counsel for the Appellant(S):

- 1.VINOD KUMAR TARLADA (SC FOR APSRTC)

Counsel for the Respondent(S):

- 1.G SAI NARAYANA RAO

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.Nos.1180 of 2011 and 1223 of 2012

COMMON JUDGMENT:

1. Questioning the adequacy of compensation granted in M.V.O.P.No.330 of 2007 on the file of Motor Accidents Claims Tribunal-cum-Family Court-cum-Additional District and Sessions Court, Vizianagaram (for short “the learned MACT”), the claimant before the learned MACT filed appeal in M.A.C.M.A.No.1180 of 2011.
2. Questioning the liability, just and adequate nature of compensation and claiming the same as excessive, respondents before the learned MACT filed the appeal in M.A.C.M.A.No.1223 of 2012.
3. For the sake of convenience, parties will be hereinafter referred to as the claimant and the respondents with reference to their status before the learned MACT.
4. One Ch. Udaya Bhaskar (for short “the Claimant”) filed M.V.O.P.No.330 of 2007 claiming a compensation of Rs.12,00,000/- for the injuries suffered by him in a motor vehicle accident and the learned MACT awarded a compensation of Rs.6,89,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization with proportionate costs.

Case of the claimant:

5(i). On the fateful day i.e. on 12.07.2006 at about 07:00 hours, while the petitioner was travelling on his scooter to attend his duties near M.R.P.G. Boys Hostel. Nellimarla road, Vizianagaram, A.P.S.R.T.C. bus bearing Registration No.AP 11 Z 4660 (hereinafter referred to “the offending vehicle”) came in a rash and negligent manner and dashed the petitioner. In the said accident, claimant sustained fracture injuries on his left leg and left fore arm and also injuries on upper lips, face, left side ribs and his scooter was also damaged. Immediately, after the accident, he was shifted to MIMS Hospital, Nellimarla for treatment. From there, he was shifted to Apex Hospital, Visakhapatnam. He had incurred huge expenditure and suffered disability.

5(ii). The accident occurred due to rash and negligent driving of the offending vehicle by its driver / Respondent No.1 under employment of Respondent Nos.2 and 3. The offending vehicle belongs to Respondent Nos.2 and 3. A case in Crime No.136 of 2006 was registered against the driver of the offending vehicle and he was subsequently charge sheeted. Therefore, the respondents are liable to pay the compensation.

5(iii). The petitioner was aged about ‘49’ years working as Social Teacher in A.P. Residential Girls Hostel, Nellimarla but now due to accident and disability, he is unable to attend daily routine. Hence, entitled for just and reasonable compensation.

Case of the Respondents:

6(i). The petitioner shall prove the pleaded accident, negligence of Respondent No.1, age, occupation and income of the petitioner.

6(ii). Negligence of the petitioner is the cause for accident and allegations contra are false. The petitioner was unable to balance the scooter and fell down on his own. Therefore, for want of negligence on the part of Respondent No.1, the respondents are not liable to pay any compensation.

6(iii). In any event, the quantum of compensation claimed is excessive.

7. On the strength of pleadings, the following issues were settled for trial by the learned MACT:

- 1) Whether the accident was occurred due to the rash and negligent driving of first respondent?
- 2) Whether the petitioner is entitled for compensation? If so what is the quantum of amount he is entitled?
- 3) To what relief?

8. Evidence before the learned MACT:

	Description	Remarks
Oral evidence	P.W.1: Ch. Uday Bhaskar	Claimant
	P.W.2: B. Srinivas	Principal, A.P. Residential School, Nellimarla
	P.W.3: Dr. P.R.K. Prasad	Consultant Plastic Surgeon, Care Hospital, Visakhapatnam

	P.W.4: Dr.T. Sai Balaram	ENT Surgeon at Care Hospital and Consultant Surgeon at Simhadri Hospital- Visakhapatnam.
	P.W.5:Dr.G.V.S.Rao	Medical Superintendent, Care Hospital, Visakhapatnam
	P.W.6: Dr.M.J.V. Raju	Medical Administrative Officer at Apollo Hospital, Visakhapatnam
	P.W.7: Dr.T.V. Ramana Murthy	Consultant Orthopedic Surgeon at Apex Hospital, Visakhapatnam
	P.W.8: Dr. B. Uday Kumar	Civil Surgeon in Orthopedic Ward, II Unit, K.G. Hospital, Viskahapatnam
	R.W.1: K. Apparao	Driver of the offending vehicle
Documentary evidence	Ex.A1: Copy of F.I.R. in Cr.No.136/2006 of Traffic Police Station. Ex.A2: Copy of wound certificate. Ex.A3:Copy of M.V.I. Report. Ex.A4: Copy of charge sheet. Ex.A5: Bunch of Medical bills for Rs.5,18,079.76/- Ex.A6: Salary particulars of petitioner issued by Principal, A.P. Residential School, Nellimarla. Ex.A7: Copy of Driving licence of the petitioner Ex.A8: Leave particulars of P.W.1 Ex.A9: Salary particulars of P.W.1 for the month of June, 2006 Ex.A10: Copy of proceedings relating to sanction of medical reimbursement.	On behalf of the petitioner

	Ex.A11: Copy of service register of P.W.1 Ex.A12: C.T. Scan report Ex.A13: Discharge summary of Apex Hospital, Visakhapatnam. Ex.A14: Discharge summary of Simhadri Hospital, Visakhapatnam. Ex.A15: Discharge summary of Simhadri Hospital, Visakhapatnam. Ex.A16: Latest X-rays(3) Ex.A17: Disability Certificate issued by Dr.B.Uday Kumar Ex.X1: Case sheet maintained by Care Hospital, Visakhapatnam Ex.X2: Case sheet maintained by Apex Hospital, Visakhapatnam Ex.X3: Case sheet maintained by Simhadri Hospital, Visakhapatnam.	
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Findings of the learned MACT:

9(i). R.W.1, the driver of the offending vehicle admitted that charge sheet was filed by the Police against him.

9(ii). The evidence of the injured witness PW.1 is coupled with crime record *vide* Ex.A1-FIR and Ex.A4-charge sheet are sufficient to believe the negligence on part of the driver of the offending vehicle.

9(iii). Since the driver of the offending vehicle is responsible for the accident and he is under the employment of Respondent Nos.2 and 3, all the respondents are jointly and severally liable to pay the compensation.

9(iv). The entitlement of petitioner for compensation under various heads are as follows:

Grievous injury, Pain and suffering	Rs.50,000/-
Transport to Hospital	Rs.25,000/-
Future prospects, comforts and other amenities	Rs.1,00,000/-
Wheel chair	Rs.5,000/-
Medicines	Rs.3,65,000/-
Loss of leave	Rs.1,44,000/-
Total	Rs.6,89,000/-

Arguments in the appeal:-

For the Claimant:

10(i). Compensation under all relevant heads is not awarded by the learned MACT.

(ii). The quantification of compensation done is not rational.

(iii). The petitioner is entitled for more compensation than what claimed.

(iv). Learned MACT ought to have awarded just and reasonable compensation.

(v). The compensation awarded is very low.

For the Respondents:

11(i). The negligence of the claimant in riding the motor cycle is ignored by the learned MACT.

- (ii). The employment of the claimant is not suffered.
- (iii). He is getting the same income.
- (iv). He has got medical reimbursement of all the expenditure incurred.
- (v). There is no convincing evidence for awarding the compensation arrived by the learned MACT.
- (vi). The appeal of the claimant is liable to be dismissed and that the compensation awarded shall be scaled down.

12. Both contesting parties filed two appeals; hence, contentions, issues need discussion and answers, as this is a first appeal and this Court being the last Court of fact.

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

14. The points that arise for determination in these appeal are:

- 1) Whether the pleaded accident dated 12.07.1006 has occurred owing to the rash and negligent driving of the driver of the offending vehicle bearing Registration No.AP 11 Z 4660 and whether there was any contribution of the negligence by the claimant in occurrence of accident?
- 2) Whether the petitioner is entitled for compensation, if so to what quantum and what is the liability of the Respondents and whether the compensation of Rs.6,89,000/- awarded by the learned MACT is just and

adequate or require any interference by way of any enhancement or reduction, if so to what extent?

3) What is the result of the appeal in M.A.C.M.A.No.1180 of 2011?

4) What is the result of the appeal in M.A.C.M.A.No.1223 of 2012?

Point No.1:

15(i). Petitioner as PW.1 deposed about the accident. He is an eye witness to the accident. Ex.A1 to Ex.A4 are copies of the crime records maintained in the regular discharge of official functions by the police.

15(ii). The evidence of RW.1 / the driver of the offending vehicle is clear that charge sheet was filed against him. He is unable to place the judgment, rendered by the Court which tried the case against him to take contra possibility.

Statutory and Precedential Guidance for appreciating the material as to accident & negligence in a claim arising out of Motor Vehicle Accident:

15(iii). It is relevant to note that the A.P. Motor Vehicles Rules, 1989 are applicable in deciding the cases by Motor Accidents Claims Tribunal and they are made in exercise of powers conferred under Section 176 of the Motor Vehicles Act which reads as follows:

176. Power of State Government to make rules.—A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:—

- (a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;*
- (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;*
- (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;*
- (d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and*
- (e) any other matter which is to be, or may be, prescribed.*

15(iv). Chapter '11' of the A.P. Motor Vehicles Rules, 1989 commencing from Rule 455 to Rule 476A deals with the powers of the Tribunal and all other allied aspects like form of application, registration, notice to parties, appearance and examination of parties, local inspection, summary examination of parties, method of recording evidence, adjournments, framing and determination of issues, judgments and enforcements of awards, Court fee relating to claim petitions applicability of Civil Procedure Code and the application for claim basis to award the claim by the claims tribunal. Rule 476 of the A.P. Motor Vehicles Rules, 1989 reads as follows:

Rule 476: Application for claim :-

(7) Basis to award the claim :- The Claims Tribunal shall proceed to award the claim on the basis of;-

(i) Registration Certificate of the Motor Vehicle involved in the accident;

(ii) Insurance Certificate or Policy relating to the insurance of the Motor Vehicle against the Third party risk;

(iii) Copy of First Information Report;

(iv) Post-mortem certificate or certificate of inquiry from the Medical Officer; and

(v) The nature of the treatment given by the Medical Officer who has examined the victim.

(7A) Specification of amount of compensation awarded by the Tribunal to each victim:- Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them.

15(v). 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.

15(vi). 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..”

15(vii). In the light of the legal and factual position, no grounds are found to interfere with the findings of learned MACT as to negligence of Respondent No.1 being the cause for the accident. Point framed is therefore answered in favour of the claimant accordingly.

Point No.2:

Precedential Guidance:

16. 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***

¹ 2009 (13) SCC 530

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

(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

²2025 AIAR (Civil) 1

³2020 (04) SCC 413

⁴2010(10)SCC 341

⁵ 2007 (14) SCC 61

⁶ 1992(2) SCC 567

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 either the Doctors, who treated, or from the medical boards etc. and in respect of permanent disability cases, assessment of future earnings principles are laid down making a distinction between physical and functional disability, wherein observations in para Nos.5, 12, 13 and 19 are found relevant. They are as follows:

⁷ 2011 (1) SCC 343

5. The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

12. *Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:*

- (i) whether the disablement is permanent or temporary;*
- (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;*
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.*

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not*

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

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.

(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.

Analysis of Evidence:

17. The petitioner as P.W.1 stated about the injuries sustained to left leg, left hand, ribs and other injuries all over the body adding that he was shifted to MIMS Hospital, Nellimarlla. From there, he was taken to Apex Hospital, Visakhapatnam. Thereafter, he was shifted to Care Hospital, Visakhapatnam

⁸ 2023 (3) SCC 439

⁹ 1995 (1) SCC 551

and several operations were conducted. He was an inpatient for 40 days and later admitted at Simhadri Hospital, Visakhapatnam. He has incurred medical expenditure of Rs.7,00,000/-. He was aged about '49' years, earning Rs.28,000/- per month by the date of accident and lost his entire leave, as he had availed leave for treatment etc.

18. During cross examination, it is elicited that he is continuing in service and getting monthly salary. It was suggested to him that for five months he was not in continuous treatment but it was only intermittent treatment. He has admitted that he got reimbursement of medical expenditure to a tune of Rs.1,50,000/- only.

19. P.W.2 / B. Srinivasa Rao also confirmed about the reimbursement of medical expenditure to a tune of Rs.1,50,000/-. It was suggested to him that had the claimant incurring expenditure was true, total expenditure might have been reimbursed for which he has denied.

20. P.W.3 / Dr. P.R.K. Prasad, Consultant Plastic Surgeon, Care Hospital, Visakhapatnam stated that he had seen the claimant on 12.07.2006 at Apex Hospital, Visakhapatnam. There were multiple lacerations. He has attended the patient at Care Hospital and also at Simhadri Hospital. Patient is suffering with biting power and speech is also altered. The surgery costs relating to disfigurement may be around Rs.80,000/-. The suggestion that the claimant is not having chewing problem is denied by the Doctor.

21. P.W.4 / Dr. T. Sai Balaram, ENT Surgeon at Care Hospital, Visakhapatnam deposed that he has examined the patient on 24.07.2006 and patient was on ventilator with Endo Tracked Tube. Tracheotomy was conducted on the petitioner.

22. P.W.5 / Dr. G.V.S.Rao deposed that he is a Medical Superintendent, Care Hospital, Visakhapatnam. He has examined the claimant at Care Hospital, Visakhapatnam. Ex.A6 bunch of medical bills are in the name of Care Hospital, Visakhapatnam.

23. P.W.6 / M.J.V. Raju deposed that he is a Medical Administrative Officer at Apollo Hospital, Visakhapatnam. Ex.A6 bunch of medical bills are in the name of Apollo Hospital, Visakhapatnam.

24. P.W.7 / Dr.T.V.Ramana Murthy deposed that he is a Consultant Orthopedic Surgeon at Apex Hospital, Visakhapatnam. On 12.07.2006, he has attended the claimant at Apex Hospital. In respect of fracture on left femur and fracture on left radius and ulna, the injuries are grievous in nature. The X-rays revealed segmental fracture on the ulna(left) and fracture on left radius and subluxation of the radial head and fracture of 7th rib (right side) and segmental fracture on left femur. He has stated about the treatment given to the claimant.

25. P.W.8 / Dr.B. Uday Kumar, Civil Surgeon in Orthopedic Ward, II Unit deposed that on 31.08.2006, he attended claimant at Simhadri Hospital. It was case of Polytrauma with head injuries. Post-traumatic resolving ARDS, the

claimant was shifted from Care Hospital, Visakhapatnam for further management. During course of the treatment interlocking nailing of the left femur for the old segmental fracture left femur with iliac bone graft was done and also Square Nailing of the ulna, dynamic compression plating of the radius and radial head excision was done. The claimant was treated with drugs and antibiotics. The claimant was discharged on 12.10.2006 and readmitted at Simhadri Hospital on 05.12.2006 for further management course / treatment. There is restriction movement of supination and pronation on his left arm. Disability is 40% which is partial and permanent in nature. He issued Ex.A17-disability certificate and deposed about the treatment given to the petitioner and also disability etc.

26. Ex.A5-bunch of medical bills are indicating the expenditure incurred by claimant for Rs.5,18,079.76/- reimbursement got by the claimant to a tune of Rs.1,53,000/-. Therefore, the balance would be Rs.3,65,079/-. Ex.A8 is the leave particulars availed by the claimant. Ex.A9 is the pay slip / salary particulars of the claimant for the month of June, 2006. Ex.A17 is the disability certificate which is indicating disability at 40%. The doctor who issued disability certificate has given evidence about the same.

Disability - Effect and Quantification of Compensation:

27. The disability contributing to loss of income is a relative aspect. Disability may not always directly affect income. But, it is not always the same as functional disability. Functional disability refers to a limitation in respect of day to

day activities of a person who becomes disabled. Ability to earn is a different aspect from the disability suffered, causing inconvenience for daily routine. A person might have functional disability although same does not affect the income. A functional disability certainly contributes to loss of income in some cases, restricting someone with mobility issues, making him unable to attend all physical requirements of his job leading to a reduced income, availment of leaves, unable to do extra work having effect on promotions in the job. Factors like accommodation at a particular job, type of job and nature of disability play a role.

28. The learned trial judge / MACT did not award any compensation under the head of permanent disability, observing that there is no loss of earning to the petitioner, although he is satisfied that the petitioner is suffering from partial permanent disability.

29. Whether the job security and continuing in employment negate the right to compensation for the disability is an important question. The learned MACT appears to be of the view that, since the employment of the petitioner is not affected, he is not entitled for the compensation under the head of disability.

30. It is relevant to note the following aspects, in respect of the permanent disability cases:

- 1) Whether the claimant is totally disabled from earning any kind of livelihood?
- 2) Whether, in spite of a permanent disability, the claimant could still effectively carry out such activities or functions which he had earlier carried on?
- 3) Whether he was prevented or restricted from discharging previous activities and functions but could carry on a lesser scale of activities and functions, so that he continuous to earn his livelihood?

31. The disability spoken by doctors is at 40%. The petitioner underwent several operations, aged about '49' years and earning Rs.28,000/- per month. He became disfigured and cannot chew food properly. The evidence of PW.2 / Principal, A.P. Residential School, Nellimarla, where the claimant was working and the evidence of the petitioner do not refer to any specific reduction in cadre in employment. Nor does the evidence of petitioner refer to any specific reduction of cadre in employment.

32. The observation of the learned MACT that there is no loss of income is with reference to functional disability, but with regard to physical disability beyond office time, the petitioner may have to bear the disability and get on with the life. Disability sometimes will lead to incurring more expenditure for making arrangements for transportation, attendants and special diet etc. beyond office

time also. 40% disability how far it contributes for extra expenditure throughout the life beyond office hours, which would not have been there, had there been no accident or injuries. This empathetic concern of Courts *prima facie* appears to be hypothetical, but the same is practical and real. There cannot be any scientific or mechanical precision for assessing the such loss. The loss of income need not always be reduction in income. Necessity of incurring extra expenditure is also a relevant factor. Extra expenditure will be there, but extra income will not be there and income will be as per the pay and time scale. Extra expenditure will have effect on savings and plannings.

33. The disability is unforeseen, unexpected and mishap is attributable to the conduct of the tortfeasor. Then there shall be some basis for rationality to take the extent of compensation awarded towards disability which will make the person suffer as to his day to day activities. Disability contributing for loss of income affecting employment is a straight case. Then, the income can be the basis. Merely because there is no reduction in income, it cannot be said that a person is not entitled for compensation under the head of permanent disability. In cases of public employment unless a person goes for medical invalidation, there will not be the job risk. Even in cases of voluntary retirement on medical invalidation etc. pension and in certain cases companionate appointment to children etc. will be there. They are ancillary and consequential. They shall contribute to the denial of compensation under the head of permanent disability.

With regard to ratio at which the disability can be scaled down in respect of the cases where the employment is not affected, there is no standard scale. But, the fact remains that there is disability which will contribute to extra expenditure throughout the life.

34. Guesswork and calculation on a national basis are the only options the Courts are left with in such cases. In the present case, considering the continuation of employment and the extent of disability, this Court finds that 1/4th of the disability spoken of by the doctors viz. 10% can be accepted as the basis for assessing the entitlement of claimant for compensation under the head of permanent disability.

35. The proven income of the petitioner is Rs.28,000/- per month. The age group of the petitioner is '49' years, if 20% of the income is added, the same will come to around Rs.35,000/-. 10% of the same will come around Rs.3,500/- per month and Rs.42,000/- per year. The Multiplier applicable to the age group of '49' years are '13'. Therefore, the entitlement of claimant under the head of permanent disability can be accepted at Rs.5,46,000/-(Rs.42,000/- x 13).

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

Sl. No.	Head	Granted by the learned MACT	Fixed by this Appellate Court
1.	Grievous injury, pain and suffering	Rs.50,000/-	Rs.75,000/-
2.	Transport to Hospital	Rs.25,000/-	-Nil-
3.	Future prospects, comforts and other amenities / loss of amenities of life	Rs.1,00,000/-	Rs.1,50,000/-
4.	Permanent disability	-Nil-	Rs.5,46,000/-
5.	Wheel chair	Rs.5,000/-	Rs.5,000/-
6.	Medical expenditure	Rs.3,65,000/-	Rs.3,65,000/-
7.	Loss of leave	Rs.1,44,000/-	Rs.1,44,000/-
8.	Future treatment	-Nil-	Rs.50,000/-
9.	Attendant charges	-Nil-	Rs.25,000/-
10.	Conveyance and Special Diet	-Nil-	Rs.25,000/-
	Total:	Rs.6,89,000 /-	Rs.13,85,000/-

37. 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.14,33,123/- and the order and decree dated 19.02.2011 passed by the learned MACT in M.V.O.P.No.330 of 2007 require modification accordingly.

Granting of more compensation than what claimed, if the claimant is otherwise entitled:-

38. The legal position with regard to awarding more compensation than what claimed has been considered and settled by the Hon'ble Supreme Court holding that there is no bar for awarding more compensation than what is claimed. For the said preposition of law, this Court finds it proper to refer the following observations of the Hon'ble Supreme Court made in:

- (1) **Nagappa Vs. Gurudayal Singh and Others¹⁰**, at para 21 of the judgment, that –

“..there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award “just” compensation, which is reasonable on the basis of evidence produced on record.”

- (2) **Kajal Vs. Jagadish Chand and Ors.¹¹** at para 33 of the judgment, as follows:-

“33. We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in the motor accident claim petitions, the Court must award the just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor.”

- (3) **Ramla and Others Vs. National Insurance Company Limited and Others¹²** at para 5 of the judgment, as follows:-

¹⁰ (2003) 2 SCC 274

¹¹ 2020 (04) SCC 413

¹² (2019) 2 SCC 192

“5. Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award “just compensation”. The Motor Vehicles Act is a beneficial and welfare legislation. A “just compensation” is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty-bound to award just compensation.”

Point Nos.3 and 4:

39. For the aforesaid reasons and in view of the findings of point Nos.1 and 2, Point No.3 and 4 are answered as follows:

In the result,

M.A.C.M.A.No.1180 of 2011

- (i) The appeal is allowed.
- (ii) The compensation awarded by the learned MACT in M.V.O.P.No.330 of 2007 at Rs.6,89,000 /- with interest at the rate of 7.5% per annum is modified and enhanced to Rs.13,85,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.
- (iii) Claimant is liable to pay the Court fee for the enhanced part of the compensation, before the learned MACT.

M.A.C.M.A.No.1223 of 2012:

- (i) The appeal is dismissed.
- (ii) The compensation awarded by the learned MACT in M.V.O.P.No.330 of 2007 at Rs.6,89,000 /- with interest at the rate of 7.5% per annum is modified and enhanced to Rs.13,85,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.
- (iii) Claimant is liable to pay the Court fee for the enhanced part of the compensation, before the learned MACT.

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

Date:25.07.2025
Knr

A. HARI HARANADHA SARMA, J

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.Nos.1180 of 2011 & 1223 of 2012

25th July, 2025

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