IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE TWENTY FIRST DAY OF JANUARY TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL AND THE HONOURABLE DR. JUSTICE G.RADHA RANI

MACMA NO: 473 AND 800 OF 2017

MACMA NO: 473 OF 2017

Appeal filed under section 173 of MV Act against the order and decree dated 18-10-2016 passed in MVOP No.2153 of 2011 on the Court of the XIII Additional Chief Judge(FTC)-City Civil Court, Hyderabad.

Between:

B. Shivaji S/o Tulasiram Aged 27 years Occ Presently Nil (previously B.Tech III Year Student Cum-Part Time Tutor), R/o H.No. 4-6-314/316, Esamia Bazar, Koti, Hyderabad

...APPELLANT/PETITIONER

AND

1. R. Naga Raju S/o Srinivas Rao Aged Major, Owner of Pulser Motor cycle Bearing no. AP 28 BL 9303 R/o 4-97, Dulapally Road, Kompally R.R. District at Hyderabad.
2. Bajaj Allianz General Insurance Co. Ltd, Rep by its Branch Manager (Claims) Far East Plaza, 3-6-111/8, II Floor Street no. 18, Main Road, Himayatnagar Hyderabad - 29.

...RESPONDENTS/RESPONDENTS

I.A. NO: 1 OF 2017(MACMAMP. NO: 963 OF 2017)

Petition under Order 6 Rule 17 R/w 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 permit the petitioner to enhance the claim from Rs. 30,00,000/- to Rs. 50,00,000/- in the claim petition in OP No. 2153 of 2011 passed by the Chairman, MACT cum XIII Addl Chief Judge (FTC), City Civil Court, Hyderabad.

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 800 OF 2017

Appeal filed under section 173 of MV Act against the order and decree dated 18-10-2016 passed in MVOP No.2153 of 2011 on the Court of the XIII Additional Chief Judge(FTC)-City Civil Court, Hyderabad.

Between:

M/s Bajaj Allianz General Insurance Company Limited, Represented by its Branch Manager, Far East Plaza, 3-6-111/8, II Floor, Street No.18. Main Road, Himayat Nagar, Hyderabad

...APPELLANT/2nd Respondent

AND

1. B. Shivaji S/o Tulsiram, aged about 25 years, resident of 4-6-314/316, Esamaia Bazar, Kati Hyderabad.

...RESPONDENT/PETITIONER

2. R.Nagaraju S/o Srinivasa Rao Aged Major, Owner of Pulser Motor Cycle Bearing No. AP 28 B.L. 9303. R/o 4-97, Dulapaliy Road, Kompally Ranga Reedy District

...RESPONDENT/RESPONDENT No. 1

I.A. NO: 1 OF 2017(MACMAMP. NO: 1706 OF 2017)

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 stay of operation of the decree and judgment in MVOP.No. 2153 of 2011 on the file of the court of the XIII Chief Judge (FTC), City Civil Court, Hyderabad dated 18th October, 2016 pending disposal of the main CMA.

Counsel for the Appellant in MACMA No. 473 of 2017 and for the Respondent No. 1 in MACMA No. 800 of 2017 : Sri Pallati Chandramouli

Counsel for the Respondent No. 1 in MACMA No. 473 of 2017 and for Respondent No. 2 in MACMA No. 800 of 2017 : None Appeared

Counsel for the Respondent No. 2 in MACMA NO. 473 of 2017 and for the Appellant in MACMA No. 800 of 2017 : Sri A. Rama Krishna Reddy

The Court delivered the following COMMON JUDGMENT:

THE HONOURABLE SRI JUSTICE SUJOY PAUL
&
THE HONOURABLE DR. JUSTICE G. RADHA RANI

M.A.C.M.A.Nos.473 & 800 of 2017

COMMON JUDGMENT: *(per Hon'ble Dr. Justice G.Radha Rani)*

As both these appeals are arising out of the same judgment in M.V.O.P.No.2153 of 2011, the same are discussed together.

2. M.A.C.M.A.No.473 of 2017 is filed by the claimant seeking enhancement of compensation while M.A.C.M.A.No.800 of 2017 is filed by the Insurance Company aggrieved by the quantum of compensation awarded by the Tribunal in M.V.O.P.No.2153 of 2011 and its liability.

3. The facts of the case in brief are that the claimant was aged about 21 years. He was a student of B.Tech third year studying in St.Martin College, Dhulapally. He was also stated to be taking tuitions for intermediate students part time and was earning Rs.15,000/- per month. It was further stated that on the occasion of New Year eve on the intervening night of 31.12.2010 / 01.01.2011 in the midnight at about 01:00 hours, while the claimant was travelling as a pillion rider on a Pulsar Motor Cycle bearing No.AP-28-BL-9303 from Kompally towards Suchitra and when reached in front of Cine Planet, the rider of the motor cycle, the friend of the petitioner (respondent No.1 in O.P.) drove the vehicle in a rash and negligent

manner with high speed and applied sudden brakes, due to which the claimant fell on the road, sustained bleeding injury on head and went un-conscious. Immediately, he was shifted to KIMS Hospital, Secunderabad and was admitted as in-patient till 31.01.2011. On 05.01.2011, 11.01.2011 and 14.01.2011, surgical operations were conducted. It was stated that, his face was disfigured, his movements were restricted, he sustained permanent disability, his career was badly affected, he was constrained to leave his education. PS Pet Basheerbagh, Cyberabad registered a case in Crime No.10 of 2011 under Section 338 of IPC against the rider of the motor cycle.

4. The claimant claimed compensation of Rs.30,00,000/- from the owner and insurer of the Bajaj Pulsar Motor Vehicle bearing No.AP-28-BL-9303.

5. The respondent No.1 - owner of the Pulsar motor cycle remained ex-parte.

6. The respondent No.2 - Insurance Company filed counter contending that the complaint was lodged at a belated stage on 12.01.2011 at 19:30 hours, though the accident was alleged to have occurred on 31.12.2010. The hospital record of the petitioner would reveal that on 01.01.2011 at about 02:00 AM, while he was driving a two wheeler met with an accident under the influence of alcohol while

returning from New Year celebrations. It would establish that the case of the petitioner was stage managed and for the purpose of claiming compensation, a false case was foisted, by planting the insured vehicle in connivance with the owner of the vehicle. It was further contended that the respondent No.1 (owner of the vehicle) was the friend of the claimant. The said motor cycle was planted in collusion with respondent No.1. In the case of accidents, when the injured was shifted to hospital, it was the duty of the concerned medical officer or the hospital authorities to intimate the same under medico legal case (for short "MLC") immediately to the concerned Police Station. But there was no such MLC intimation in the case, as such suspected the involvement of the insured motor cycle bearing No.AP-28-BL-9303 in the alleged accident. It was further contended that respondent No.1 (the driver - cum - owner of the said motorcycle) was not holding any driving license to drive the said motor cycle and contravened the provisions of Motor Vehicles Act, 1988 as well as Motor Vehicle Rules. The remand report and charge sheet filed against respondent No.1 also would show that he was not holding any driving license as on the date of accident. As such, charge sheet was filed under Section 181 of the Motor Vehicles Act for driving the vehicle without driving license. As the respondent No.1 committed breach of the terms and conditions of the policy, the petition was liable to be dismissed.

6.1. The Insurance Company further called for strict proof of the age, the claimant being a student of B.Tech third year working as a part time tutor and that he was earning Rs.15,000/- per month. It also called for strict proof of the injuries sustained by the claimant and that he incurred the amounts as alleged by him. The Insurance Company further contended that the compensation claimed by the claimant was excessive and prayed to dismiss the claim petition against the Insurance Company with costs.

7. The injured was examined as PW.1. A Neurosurgeon of KIMS Hospital, Secunderabad was examined as PW.2. The billing manager of KIMS Hospital was examined as PW.3 and the member of the District Medical Board, Khammam, who issued the disability certificate, was examined as PW.4. Exs.A1 to A13 were marked on behalf of the claimant. The Senior Executive – Legal of the Insurance Company was examined as RW.1 and the CMO of KIMS Hospital, Secunderabad was examined as RW.2. Exs.B1 to B7 were marked on behalf of the Insurance Company.

8. On considering the oral and documentary evidence on record, the Motor Accidents Claims Tribunal (for short "Tribunal") considered that the accident occurred due to the rash and negligent driving of the motor cycle bearing No.AP-28-BL-9303 by its rider.

9. The Motor Accident Claims Tribunal considered the income of the claimant as Rs.15,000/- per month and by adding 50 % of it towards future prospects, considered the same as Rs.22,500/- and by applying multiplier "18" and considering the partial and permanent disability sustained by the claimant as 25 % ascertained the loss of earnings of the claimant as Rs.12,15,000/-. The Tribunal awarded Rs.3,30,000/- for the medical expenses incurred by the claimant, Rs.3,00,000/- for future medical expenses, Rs.1,00,000/- towards pain and suffering and mental agony and Rs.3,00,000/- for loss of earnings, Rs.2,00,000/- towards attendant charges, extra nourishment and travelling expenses and Rs.1,00,000/- for loss of marital life, Rs.1,00,000/- for loss of amenities in life, Rs.50,000/- for physiotherapy and in all awarded an amount of Rs.26,95,000/-. Considering that the rider of the motor cycle drove the vehicle without driving license, the Tribunal directed the Insurance Company to pay the awarded amount and to recover the same from respondent No.1. The Tribunal directed the Insurance Company to pay the said amount with interest @ 9 % per annum from the date of petition till realization with proportionate costs and interest.

10. Aggrieved by the said award passed by the Tribunal, the claimant and the Insurance Company preferred these appeals.

11. Heard Sri Pallati Chandra Mouli, learned counsel for the claimant and Sri A.Rama Krishna Reddy, learned Standing Counsel for the Insurance Company.

12. Learned counsel for the claimant in M.A.C.M.A.No.473 of 2017 contended that the claimant preferred the appeal seeking enhancement of the award from Rs.30,00,000/- to Rs.50,00,000/-. I.A.No.1 of 2017 was filed seeking enhancement of claim. As per the disability certificate issued by PW.4, the appellant sustained 25 % permanent disability, which was partial and permanent in nature. But the functional disability was 100 %. The disability certificate was issued only with reference to orthopedic injuries sustained by the claimant. The claimant sustained severe head injuries. As per the evidence of PW.2, the treating doctor in KIMS Hospital, Secunderabad, the claimant had undergone major surgeries for several times. Due to lack of knowledge, the claimant could not obtain the disability relating to head injuries from medical board or from treated doctor. The claimant was an engineering student - cum - home tutor. His income was considered as Rs.15,000/- per month. But the Hon'ble Apex Court in its recent judgment in **Atul Tiwari v. Regional Manager, M/s. Oriental Insurance Company Limited**[1] decided on 06.01.2025 had considered the notional income of a B.Tech student, who was

[1] 2025 SCC Online SC 29

similarly placed as that of the claimant as Rs.20,000/- per month. The Tribunal ought to have awarded an amount of Rs.10,00,000/- towards pain and suffering. But awarded only a meager amount of Rs.1,00,000/- and ought to have awarded Rs.3,00,000/- towards loss of expectation of life and interest ought to have been awarded @ 12 % per annum instead of 9 % per annum and prayed to enhance the claim from Rs.30,00,000/- to Rs.50,00,000/-.

13. Learned Standing Counsel representing the Insurance Company in M.A.C.M.A.No.800 of 2017 on the other hand contended that there was a delay of 12 days in lodging the FIR. As per Ex.A4, the claimant was hit by an un-known vehicle and that he was under the influence of alcohol after attending a New Year celebration. No documentary evidence was filed by the claimant to show that the claimant was a student and was earning Rs.15,000/- per month. The Tribunal erred in awarding an amount of Rs.3,30,000/- when the evidence on record would show that he availed Arogyasri for his medical treatment. The Tribunal erred in awarding Rs.3,00,000/- towards loss of earnings when the multiplier method is adopted for calculating loss of income, which would amount to awarding twice under the same head. The alleged accident was a hit and run by an un-known vehicle. The rider and the pillion rider were under the influence of alcohol. As such, the Tribunal ought to have dismissed the claim. The interest awarded at

9 % was on high side. The Tribunal ought to have awarded interest @ 6 % per annum and prayed to set aside the award and decree passed in M.V.O.P.No.2153 of 2011 by the Tribunal.

14. As seen from these rival contentions, admittedly, the claimant travelled as a pillion rider on the Bajaj Pulsar Motor Cycle bearing No.AP-28-BL-9303. The Pulsar motor cycle was driven by respondent No.1. As per the claim petition, the motor cycle was not hit by any vehicle, but while the rider of the motor cycle driving the same in a rash and negligent manner, applied sudden brakes, due to which, the pillion rider fell on the road and sustained bleeding injuries on his head and went un-conscious and he was admitted in KIMS Hospital immediately. Ex.A1 is the certified copy of the FIR. The complaint lodged by the father of the injured was enclosed to it. Even as per the complaint, the motor cycle was driven by its rider in a rash and negligent manner, due to which, the claimant who was travelling as a pillion rider fell down, sustained head injury and fell un-conscious. The delay was also explained by the *de-facto* complainant that his son was un-conscious even by the date of lodging the complaint on 12.01.2011 and as he was attending his son, could not lodge the complaint immediately. Ex.A2 is the final report (charge sheet) filed by Police of PS Pet Basheerbagh. As per the investigation conducted by the Police also, the vehicle was not hit by any un-known vehicle, but

the accident occurred due to the rash and negligent driving by the rider of the motor cycle, who applied sudden brakes, due to which the pillion rider fell down and sustained grievous head injuries. It was also mentioned therein that the injured claimant was a B.Tech student in St.Martin College, Dhulapally. Ex.A3 is the injury certificate issued by the Casualty Medical Officer of KIMS Hospital which would disclose that the claimant was admitted in the hospital on 01.11.2011 and that he was discharged on 31.01.2011. The injury certificate also would disclose that the claimant sustained traumatic CSF rhinorrhoea and diffuse axonal injury. It was recorded in the history of the accident that he was hit by an un-known vehicle while travelling on a two-wheeler at around 02:00 AM on 01.01.2011 near Kompally. This aspect was seriously contended by the learned Standing Counsel of Insurance Company that the Bajaj Pulsar motor cycle was hit by an un-known vehicle and got examined RW.2, the Casualty Medical Officer working in KIMS Hospital to prove the said fact. RW.2 stated in his evidence that Ex.A3 was issued by one Dr. K.K. Sai Brahmam and he left the hospital and the said history was recorded by the doctor basing on the information given by the patient attendants accompanying the patient. Admittedly, the claimant was in un-conscious state and he was not in a position to give the details of the accident. The father of the claimant, who admitted the claimant

in the hospital was not an eye-witness to the accident. As such, the same could not be taken as basis for suspecting the claim. As the Investigating Officer after completing the investigation, filed the charge sheet holding that the rider of the motor cycle was alone responsible for the accident for his negligent driving, the manner of the accident need not be suspected. The delay in lodging the report is also properly explained by the father of the claimant while lodging the complaint enclosed to Ex.A1 itself. As such, this Court is of opinion that the Tribunal had not committed any error in holding that the accident occurred due to the rash and negligent driving of the rider of the motor vehicle bearing No.AP-28-BL-9303.

15. However, the charge sheet marked under Ex.A2 would disclose that the rider of the motor cycle was not holding driving license, as such, the charge sheet was filed against him under Section 181 of the Motor Vehicles Act apart from Section 338 of IPC. As the same would prove that the respondent No.1 - owner - cum - driver of the motor cycle committed breach of the terms and conditions of the policy by driving the vehicle without having a driving license, this Court also does not find any illegality in the award passed by the Tribunal for "pay and recovery" considering that the claimant was a third party to the Insurance Policy and the Motor Vehicles Act being a beneficiary legislation.

16. With regard to the amount of compensation, it is averred that the claimant was a B.Tech third year student and no rebuttal evidence was adduced to disprove the same. As such, notional income has to be taken into consideration for calculating the loss of earnings. In **B.Ramulamma v. Venkatesh Bus Union, Lingarajapuram, Bangalore and another**[2], the erstwhile High Court of Andhra Pradesh on considering various judgments of the Hon'ble Apex Court and of the various High Courts, held that:

> 36. As far as the students, who are about to complete their course, are concerned, it is very difficult to determine their income. Guess work becomes inevitable. But even for guesswork some rationale has to be followed. Every conclusion must be based on sound reasoning and established legal principles. The parents of the deceased with fond hope impart education to their children. Now-a-days the educational expenses have been increased. Even if a student secures a seat in EAMCET under Convener quota, the parents have to bear other expenses, such as hostel fees, books, travelling charges etc. Normally, the parents have to spend at least Rs. 70,000/- to Rs. 1,00,000/- per annum to meet the expenses of their children, who are studying B.Tech or M.Tech or similar courses. Of course expenditure incurred for education cannot be taken as basis for determining the income of the deceased students. After completing their

[2] 2009 (6) ALT 784

education, when they may secure a job, what would be their salary and how long they would have continued in their job and how much they would have contributed to their parents are the questions which necessarily depend upon some guess work. In such circumstances, the evidence of contemporaries or the classmates of those students who have secured job and who are getting regular income can be taken as basis.

52. In view of the present salaries, being earned by the Computer Engineers, there cannot be any doubt to say that the deceased would have earned minimum Rs. 12,000/- to Rs. 15,000/- per month. It has to be seen that now-a-days IV class employees are also getting minimum Rs. 7,000/- to Rs. 10,000/- per month depending upon their service. The Junior Assistants are also getting Rs. 12,000/- to Rs. 15,000/- per month. Therefore, considering the normal scales being earned by the Government employees and also the minimum wage scales fixed to the technical persons, we are of the view that the minimum salary of a technical person, who is holding a bachelor degree in computers or electronics or mechanical, can be taken as Rs. 12,000/- per month. Therefore, the income of the graduates in engineering i.e, B.Tech, cannot be fixed less than Rs. 12,000/- per month, otherwise it amounts to neglecting the ground reality. Similarly those who have completed M.Tech, MCA, MBA, the income of such persons can be fixed a little higher i.e. at Rs. 15,000/- per month. This will take care of

the additional income which they would have earned in course of their service.

17. Relying on the above judgment, the learned Standing Counsel for the Insurance Company contended that the notional income of a B.E graduate can be taken as Rs.12,000/- per month. But in the present case, the claimant was a student of B.Tech. third year but his notional income was taken as Rs.15,000/- per month by the Tribunal, which was more than the income fixed by the High Court of Andhra Pradesh in the above case, as such the same needs to be reduced.

18. The contention of the learned counsel for the claimant on the other hand was that the accident in the said case was occurred in the year 1995. But in the present case, the accident occurred on 31.12.2010 i.e. 15 years later. The Hon'ble Apex Court in **Atul Tiwari v. Regional Manager, Oriental Insurance Company Limited** (cited supra) for the accident occurred on 03.10.2009 considered the notional income of a student as Rs.20,000/- per month as against Rs.15,000/- taken by the Tribunal basing on the efflux of time and changed economic scenario and insisted for taking the notional income of the claimant as Rs.20,000/- per month.

19. However, in the above case, the Hon'ble Apex Court held that it was proved that the said claimant was a meritorious student. But, in the present case, no such evidence was adduced to consider the

academic excellence or the merit of the present claimant. However, as the Tribunal considered the notional income of the appellant - claimant as Rs.15,000/- per month, more than the income considered by the High Court in the case of **Ramulamma** (cited supra) and an addition of 50 % of it is also added towards future prospects as per the judgment of the **National Insurance Company Limited v. Pranay Sethi**[3], we consider that the amount of Rs.22,500/- taken by the Tribunal as loss of income for assessing the loss of future earnings is justifiable.

20. The evidence of PW.2, the Neuro Surgeon of KIMS Hospital would disclose that the claimant sustained an open head injury (traumatic CSF Rhinorrhea), diffuse axonal injury, multiple fractures of left side of the skull bones, sub-arachnoid bleeding and bilateral pleural effusion right more than left, with collapse of right lower limb of lung. It was also stated by PW.2 that the patient was in coma score of E-1, M-4 B-1 6/15 (severe head injury). He was admitted in neuro ICU with ventilator support. He was on antibiotics, anti convulsants and anti odema measures and was on Ionotropic supports. He developed CSF Rhinorrhea (Cerebro Spinal Fluid - leak from the nose). On 05.01.2011, a bicoronal flap surgery and frontal craniotomy was performed on him. ACF repair with fascialata and pericranium was

[3] (2017) 16 SCC 680

performed on 05.01.2011. After the surgery also, the claimant was found to be drowsy, as such a CT-scan brain was done, which revealed diffuse cerebral edema. For prolonged ventilator support, he had undergone tracheostomy on 11.01.2011. As he was not showing any signs of improvement, another surgery i.e. bilateral fronto temparo craniotomy was performed on 14.01.2011. He stated that the said injuries were grievous in nature.

21. He further stated that the patient was admitted for second admission on 02.07.2011 for replacement of skull bone (BFR), which bone was kept in abdomen wall on 14.01.2011 and was discharged on 12.07.2011. He stated that the claimant required further surgery for defect in the front skull bones, for which foreign titanium mash was required, which would cost an amount of Rs.3,00,000/-, as per Ex.A10. He further stated that the patient could not smell because of fracture forehead skull base fracture.

22. In the cross-examination, PW.2 also stated that there was weakness under lower limb at the time of second admission and discharge. The knee deformity was because of RTA. But the main injury was that of head and chest. He further stated that it was compulsory for the patient to undergo further surgery because there was deformity over the forehead. He stated that he had not mentioned

in the discharge summary about the lack of sense of smell of patient, as the patient was in coma at that time.

23. Thus, the evidence of PW.2 would disclose that the claimant had undergone three surgeries. One on 05.01.2011, second one on 11.01.2011 and third one on 14.01.2011 and craniotomy was performed on him and the claimant sustained deformity due to fracture forehead of skull and he was unable to smell because of the injuries sustained by him to his skull and that he also required another major surgery with cranioplasty, which would require Rs.3,00,000/- as per the estimation given by PW.2.

24. Thus, considering the evidence of PW.2, which would disclose that the claimant was admitted as in-patient in KIMS Hospital from 01.01.2011 to 31.01.2011 and had undergone three surgeries and was admitted for the second time once again on 02.07.2011 and was admitted as in-patient for a period of 10 days and was discharged on 12.07.2011 and was in comatose condition for several days and was on prolonged ventilator treatment, the amount of Rs.1,00,000/- awarded by the Tribunal towards pain and suffering is considered as meager. The appellant - claimant ought to have been awarded an amount of atleast Rs.2,00,000/- towards pain and suffering.

25. The evidence of PW.3, the billing manager of KIMS Hospital would disclose that the claimant paid an amount of Rs.3,30,000/- under Ex.A8. As such, the appellant - claimant was entitled to receive the said amount towards the actual medical expenses incurred by him.

26. As the evidence of PW.2 would disclose that the claimant required an amount of Rs.3,00,000/- for further surgery, the Tribunal rightly awarded an amount of Rs.3,00,000/- for his future medical expenses, which requires no interference by this Court.

27. The Tribunal awarded an amount of Rs.3,00,000/- towards loss of earnings. However, as the claimant failed to adduce any evidence that he was earning as a part time tutor while studying and that he sustained any actual loss of earnings and the loss of future earnings is considered basing on a notional income, this Court considers that there is no necessity to award any amount under this head. As such, the same is required to be deleted.

28. The evidence of PW.4, the member of the District Medical Board, Khammam would disclose that the claimant appeared before the Medical Board on 03.10.2012 and after examining him, he issued the disability certificate Ex.A9, which was counter-signed by the Medical Board Chairman. As per Ex.A9, PW.4 stated that the claimant sustained 25 % disability, which was partial and permanent. As per

the learned counsel for the claimant, PW.4 being an orthopedic civil surgeon had issued the disability certificate only assessing the disability sustained by the claimant to his knee, but not considering the head injury sustained by him. But if the same was true, the claimant or the learned counsel for the claimant ought to have obtained the opinion of PW.2 with regard to the disability sustained by the claimant basing on the head injuries sustained by him. But the evidence of PW.2 is silent on the said aspect. He only stated that the claimant could not smell. The claimant ought to have shown his entire medical record to PW.4 while obtaining the disability certificate. As such, it has to be considered that PW.4 after considering the entire medical record of the petitioner and after making an independent assessment had only given the disability certificate marked under Ex.A9 as 25 %.

29. Considering the photograph of the claimant pasted on the disability certificate also, his head injury appeared to be healed by the date of issuing the said certificate on 03.10.2012. As such, as the physical disability sustained by the claimant is assessed by an experienced doctor, the member of the Medical Board and assessed the same as 25 % and the evidence of PW.1 is also silent about the functional disability sustained by him and the difficulties faced by him in conducting his normal functions, it is considered that the 25 %

functional disability taken by the Tribunal is also proper. As such, we do not deem it necessary to interfere with the calculation made by the Tribunal towards loss of earnings sustained by the claimant. Considering the judgment of the Hon'ble Apex Court in **Sarla Verma and others v. Delhi Transport Corporation and another**[4], as the multiplier is taken as "18" and the loss of earnings is calculated as Rs.22,500/- x 12 x 18 x 25 % = 12,15,000/-, the same is accepted.

30. Considering the prolonged treatment taken by the claimant in a reputed hospital and as some of his family members might have attended to him during the above period and might have incurred amounts for extra nourishment and travelling, the amount of Rs.2,00,000/- awarded by the Tribunal for all these expenses i.e. attendant charges, extra nourishment and travelling is considered as reasonable.

31. As the evidence of PW.2 would disclose that the petitioner had sustained loss of smell, the amount of Rs.1,00,000/- awarded towards loss of amenities in life by the Tribunal is also considered as reasonable. However, as there is no evidence that the petitioner had sustained any difficulty for performing marriage, no amount ought to have been awarded by the Tribunal for loss of marital life. As such, the amount of Rs.1,00,000/- awarded by the Tribunal under the said

[4] (2009) 6 SCC 121

head need to be deleted. As the evidence of PWs.2 and 4 is also silent with regard to any physiotherapy required by the claimant and no bills for physiotherapy were also enclosed by the claimant, the said amount of Rs.50,000/- awarded by the Tribunal also need to be deleted.

32. As such, this Court considers it reasonable to award the following amounts under the following heads:

S. No.	Heads	Amount of Compensation awarded (in Rs.)
1.	Loss of Earnings	Rs.12,15,000/-
2.	Medical Expenses	Rs.3,30,000/-
3.	Future Medical Expenses	Rs.3,00,000/-
4.	Pain and Suffering	Rs.2,00,000/-
5.	Attendant charges, extra nourishment and travelling expenses	Rs.2,00,000/-
6.	Loss of amenities in life	Rs.1,00,000/-
Total (in Rs.)		**Rs.23,45,000/-**

33. We also consider it appropriate to award interest @ 7.5 % per annum instead of 9 % interest per annum as awarded by the Tribunal.

34. In the result, M.A.C.M.A.No.800 of 2017 filed by the Insurance Company is allowed reducing the compensation from Rs.26,95,000/- awarded by the Tribunal to Rs.23,45,000/- and M.A.C.M.A.No.473 of 2017 filed by the claimant is dismissed confirming the compensation of Rs.23,45,000/- with interest @ 7.5 % per annum. The Insurance Company is directed to deposit the above amount within a period of eight (08) weeks from the date of receipt of a copy of this judgment by

deducting the amount already deposited by it if any and the claimant is permitted to withdraw the said amount without furnishing any security. The Insurance Company is permitted to recover the said amount from respondent No.1 after its deposit.

No order as to costs.

As a sequel, miscellaneous applications pending in these appeals, if any shall stand closed.

Sd/- P. CH. NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The XIII Additional Chief Judge(FTC)-City Civil Court, Hyderabad.(with records, if any)
2. One CC to Sri Pallati Chandramouli, Advocate [OPUC]
3. One CC to Sri A. Rama Krishna Reddy, Advocate [OPUC]
4. Two CD Copies

HIGH COURT

DATED: 21/01/2025



COMMON JUDGMENT+
COMMON DECREE
MACMA.No.473 of 2017
AND
MACMA.No.800 of 2017

DISMISSING THE
MACMA.No.473 of 2017
AND
ALLOWING THE
MACMA.No.800 of 2017

(6)
24/02/25

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE TWENTY FIRST DAY OF JANUARY TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE DR. JUSTICE G.RADHA RANI

MACMA NO: 473 AND 800 OF 2017

MACMA NO: 473 OF 2017

Between:

B. Shivaji S/o Tulasiram Aged 27 years Occ Presently Nil (previously B.Tech III Year Student Cum-Part Time Tutor), R/o H.No. 4-6-314/316, Esamia Bazar, Koti, Hyderabad

...APPELLANT/PETITIONER

AND

1. R. Naga Raju S/o Srinivas Rao Aged Major, Owner of Pulser Motor cycle Bearing no. AP 28 BL 9303 R/o 4-97, Dulapally Road, Kompally R.R. District at Hyderabad.
2. Bajaj Allianz General Insurance Co. Ltd, Rep by its Branch Manager (Claims) Far East Plaza, 3-6-111/8, II Floor Street no. 18, Main Road, Himayatnagar Hyderabad - 29.

...RESPONDENTS/RESPONDENTS

MACMA NO: 800 OF 2017
Between:

M/s Bajaj Allianz General Insurance Company Limited, Represented by its Branch Manager, Far East Plaza, 3-6-111/8, II Floor, Street No.18. Main Road, Himayat Nagar, Hyderabad

...APPELLANT/2nd Respondent

AND

1. B. Shivaji S/o Tulsiram, aged about 25 years, resident of 4-6-314/316, Esamaia Bazar, Kati Hyderabad.

...RESPONDENT/PETITIONER

2. R.Nagaraju S/o Srinivasa Rao Aged Major, Owner of Pulser Motor Cycle Bearing No. AP 28 B.L. 9303. R/o 4-97, Dulapaliy Road, Kompally Ranga Reedy District

...RESPONDENT/RESPONDENT No. 1

Appeals filed under section 173 of MV Act against the order and decree dated 18-10-2016 passed in MVOP No.2153 of 2011 on the Court of the XIII Additional Chief Judge(FTC)-City Civil Court, Hyderabad.

These appeals coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Court below and the material papers in the case and upon hearing the arguments of Sri Pallati Chandramouli, Advocate for the Appellant in MACMA No. 473 of 2017 and for the Respondent No. 1 in MACMA No. 800 of 2017 and Sri A. Rama Krishna Reddy, Advocate for the Respondent No. 2 in MACMA No. 473 of 2017 and for Appellant in MACMA No. 800 of 2017 and none appeared for the Respondent No. 2 in MACMA NO. 473 of 2017 and for the appellant No.2 in MACMA No. 800 of 2017 either in person or by Advocate.

This Court doth Order and Decree as follows:

1. That the MACMA No. 800 of 2017 filed by the Insurance Company be and hereby is allowed reducing the compensation from Rs. 26,95,000/- awarded by the Tribunal to Rs. 23,45,000/-
2. That the MACMA No. 473 of 2017 filed by the claimant is dismissed confirming the compensation of Rs. 23,45,000/- with interest @ 7.5% per annum;
3. That the Insurance Company be and hereby is directed to deposit the above amount within a period of eight (08) weeks from the date of receipt of a copy of this judgment by deducting the amount already deposited by it if any and the claimant is permitted to withdraw the said amount without furnishing any security;
4. That the Insurance Company be and hereby is permitted to recover the said amount from respondent No. 1 after its deposit.
5. That save as aforesaid, the decree of the Lower Tribunal shall stand confirmed in all other aspects; and
6. That there shall be no order as to costs in this appeal.

Sd/- P. CH. NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The XIII Additional Chief Judge(FTC)-City Civil Court, Hyderabad
2. Two CD Copies

HIGH COURT

DATED: 21/01/2025

COMMON DECREE
MACMA.No.473 of 2017
AND
MACMA.No.800 of 2017

DISMISSING THE
MACMA.No.473 of 2017
AND
ALLOWING THE
MACMA.No.800 of 2017

(4)
24/02/25