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APHC010592852012



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

[3520]

WEDNESDAY, THE 1st DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 833/2012

Between:

1.G. JAYARAMI REDDY, S/O RAMESWARA REDDY AGRICULTURIST,
 OWNER OF THE TRACTOR & TRAILER NO.AP 21K 4127 & 4128 R/O
 MADDUR VILLAGE, NANDYAL MANDAL,

...APPELLANT

AND

1.A V N MURALIMOHAN AND ANOTHER, S/O RAMANAIAH, MAJOR
 OWNER OF LORRY NO. AP 21 W 4758 R/O H.NO.11/586 ROOM NO.
 1, OPP; SUB STATION, CHAGALAMARRI, VILLAGE AND
 MANDAL,KURNOOL DISTRICT.

2.M/S THE ORIENTAL INSURANCE COMPANY LIMITED, REP.BY ITS
 DIVISIONAL MANAGER, KURNOOL.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court allow the appeal by setting aside the decree and judgment dated 16-12-2011 made in MVOP.No. 36 of 2010 on the file of the Chairman MACT cum V Addl. Dist Judge [FTC] Kurnool at Nandyal

IA NO: 1 OF 2012(MACMAMP 1959 OF 2012

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased condone the delay of 15 days in representing the above case

Counsel for the Appellant:

1.B S REDDY

Counsel for the Respondent(S):

1..

2.A JAYANTHI

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**M.A.C.M.A.No.833 of 2012****JUDGMENT:****Introductory:**

1. The appellant herein is the claimant before the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (F.T.C), Kurnool at Nandyal (for short “the learned MACT”). He filed the case claiming compensation for the damages caused to his Tractor and Trailer bearing Registration Nos.AP 21 K 4127 and AP 21 K 4128 in an accident that occurred on 19.04.2008, due to the rash and negligent driving of lorry bearing No.AP 21 W 4758 (hereinafter referred to as “the offending vehicle”) by its driver.

2. Respondent No.1 is the owner of the lorry / offending vehicle. Respondent No.2 is the Insurance Company. The appellant claimed compensation of Rs.1,50,000/-, but the learned MACT awarded compensation of Rs.41,400/-. Contending the same as inadequate and unreasonable, the present appeal is filed.

3. For the sake of convenience, the parties will be hereinafter referred to as the petitioner and the respondents, as and how they are arrayed before the learned MACT.

Case of the petitioner:

4. On 19.04.2008, the tractor of petitioner was parked near Silpa Weigh Bridge on National Highway-18, Nandyal. The offending vehicle came from the

Kurnool Side in a rash and negligent manner and dashed the stationed Tractor and Trailer of the petitioner causing damage. The petitioner incurred expenses of Rs.70,566/- towards repairs to the tractor engine and Rs.35,700/- towards repairs to the trailer.

5. A case in Crime No.78 of 2008 was registered against the driver of the offending vehicle for the offences under Sections 337 and 338 IPC.

6. The Policy was in force as on the date of the accident. Since the petitioner suffered loss due to the damages caused to the tractor and trailer, he is entitled for compensation and respondents are liable to pay.

7. Respondent No.1, owner of the offending vehicle remained *ex parte* before the learned MACT.

Case of respondent No.2:

8(i). The petitioner shall prove all the allegations including the accident, negligence of the driver of the offending vehicle and the damages suffered.

(ii). Further, it is the case of respondent No.2 that there was no negligence on the part of the driver of the lorry.

(iii). In worst case, the negligence of the drivers of the both vehicles shall be considered as the cause for accident.

Evidence:

9. On behalf of the claimant, he was examined as P.W.1 and he has stated about the ownership of the vehicle, accident and the damage caused to the vehicle.

10. P.W.2-One K. Danamaiah, motor mechanic who studied ITI was examined to show that the spare parts used for repairs for the tractor and trailer were worth of Rs.70,566/- covered by Ex.A4.

11. P.W.3-one S. Rayapu Reddy was examined to show that repairs were made and new parts were provided to the tractor and trailer and they worth Rs.35,700/- were covered under Ex.A5.

12. One Chakali Balanna was examined as P.W.4 to show that he has witnessed the accident and that there was negligence on the part of the driver of the lorry / offending vehicle.

13(i). P.W.5-One P.S.M. Hussain, Surveyor was examined to show that he is a licensed Surveyor for four Government Insurance Companies and that Ex.A2 is the report prepared by him on inspection of the accident spot.

(ii). As per his evidence, the repairs to the tractor and trailer were assessed by him at Rs.1,07,000/-. After deducting depreciation, the value was assessed at Rs.41,400/-. But, depreciation need not be deducted when new parts are used for the repairs.

14. No evidence is adduced on behalf of the Insurance Company.

15. The claimant relied on Ex.A1-attested copy of FIR, Ex.A2-Surveyor's Report, Ex.A3-Postive photographs, Ex.A4-cash bill issued by M/s.Rythu Tractors, Nandyal, Ex.A5- bill issued by M/s. Priya Engineering works, Nandyal and Ex.X1 is the copy of the Insurance Policy.

Findings of the learned MACT:**Accident:**

16. In view of the evidence of the eye witness, the FIR and the Surveyor's report, the negligence contended by the petitioner is accepted. The petitioner claimed that he has spent Rs.70,566/- and Rs.35,700/-. He has examined P.Ws.2 to 5.

17. P.W.5 is the Surveyor. According to P.W.5, the surveyor, the final bill should be Rs.41,400/-. He stated that the damaged spare parts removed were sold out at the rate of Rs.12/- to Rs.15/- per kilogram. But, no record is produced.

18. The petitioner had purchased the trailer in the year 2006 and the trailer can be subjected to depreciation due to usage. He was not handed over damaged parts to the Insurance Company after repairs. Therefore, the learned MACT held that the final bill amount of Rs.41,400/- alone is the entitlement of the claimant for compensation. Loss of incidental income during the period of repairs is not proved. Therefore, entitlement of claimant in all is for Rs.41,400/- only.

Arguments in the appeal:**For the appellant:**

19(i). The incidental income due to the non availability of the vehicle during the repair period is erroneously denied.

(ii). There is no rationality in the deducting depreciation when replacement of parts takes place.

For respondent-Insurance Company:

20(i). The deduction of amount towards the depreciation is rational.

(ii). The compensation awarded is just and reasonable.

(iii). Evidence of P.W.5 is properly appreciated by the learned MACT.

21. Learned counsel for appellant would submit that the learned MACT erred in deducting the amount towards the depreciation and that the period for which the vehicle was kept for repairs shall be taken into consideration for awarded loss of income.

22. Heard both sides extensively. Perused the record. Thoughtful consideration is given to the arguments advanced by the both sides.

23. Now the points that arise for determination in this appeal are:

1) Whether the claimant is entitled for compensation of Rs.41,400/- awarded by the learned MACT under the award and decree dated 16.12.2011 is just and reasonable or requires any enhancement, if so, on what grounds?

2) What is the result of the appeal?

Point No.1:

24. Since the appeal is filed by the claimant / petitioner, negligence, liability of the respondents and entitlement of the claimant for compensation are all out

of dispute. The only point requires determination is what is the just and reasonable compensation to which the appellant is entitled.

25. The damage caused to the tractor of the appellant is not in dispute. The documentary evidence Ex.A4-cash bill issued by M/s. Rythu Tractors, Nandyal is indicating the bill amount of Rs.70,556/-. Ex.A5-bill issued by M/s.Priya Engineering works, Nandyal is indicating the amount of Rs.35,700/-. It is clear that both bills relate to separate and independent repairs. No overlapping between Exs.A4 and A5 is apparent.

26. The petitioner claimed that he has spent Rs.70,566/- towards spare parts purchased from Rythu tractors corresponding to Ex.A4 and also Rs.35,700/- towards repair to the trailer carried out at Priya Engineering the corresponding to Ex.A5 and in total he spend Rs.1,06,266/- . He has placed Exs.A4 and A5.

27. During the cross-examination of P.W.1 it was suggested to him that he is deposing false for the purpose of claiming excessive compensation and that he has claimed compensation from New India Assurance Company, with which his tractor is insured and that no parts are replaced. He denied

28(i). P.W.2, one K. Danamaiah, is an ITI mechanic. As per his evidence, new parts were provided to the tractor value Rs.70,566/-.

(ii). During cross-examination of P.W.2, it was suggested to him that parts are not placed and excessive bills are given.

29. P.W.3, one S. Rayapu Reddy, is said to be Proprietor of Priya Engineering works, where the trailer was repaired. According to his evidence, spare parts worth Rs.35,700/- were used for repairs covered under Ex.A5.

30. It appears that the learned MACT has given more credence to evidence of P.W.5, while assessing the damages at Rs.41,400/-.

31. As per the evidence of P.W.5, he gave Ex.A2-Survey Report. Ex.A2, dated 27.06.2008, contains the details of the damage caused to the tractor and trailer. They are:

Details of Damage

About Engine (Tractor):

1. *Front Tie rod ends badly bent and damaged.*
2. *Front "I" Beam badly bent and damaged.*
3. *Steering worm shaft and its relevant components are badly bent and detached.*
4. *Gear box-counter shaft and top gear and load gear teeth's are cut and damaged.*
5. *Power transmission shaft edges cut and damaged.*
6. *L.H and R.H side Hydraulic arms badly bent and damaged.*
7. *L.H and R.H side fender panels badly dented and folded.*
8. *Rear both wheel rims badly twisted at corner edges.*
9. *Cultch assembly badly broken in to pieces and its release beading broken.*

About Load Body (Trailer):

1. *Trailer Chasis badly bent and damaged.*
2. *L.H. and R.H side doors are slightly dented.*
3. *Trailer rear door badly dented at L.H. side.*

4. *Rear door support pillars badly bent and damaged.*
5. *Hydraulic lift cocky struck and damaged and its hose pie cut and detached.*

32. Estimates submitted by the repairer (Rythu tractors, Nandyal) is Rs.1,06,266/-. Further P.W.5 evidence is that both the tractor and trailer were damaged. To make the vehicle to bring to road working condition new spare parts were replaced and if new spare parts are used, there will not be any depreciation. He has admitted that he has deducted depreciation in his report. He has also admitted that Insurance Company is also liable for non usage of tractor at the time of repair and the tractor like in the present case will fetch income of Rs.1,000/- per day. Without deducing depreciation his assessment shall be more than Rs.59,000/-.

33. From the evidence available on record, the following aspects are clear:

- (i). the petitioner deposed that he has spent the amount covered by Exs.A4 and A5.
- (ii). P.Ws.2 and 3 deposed that new spare parts covered by Exs.A4 and A5 are provided to the vehicle. Therefore, Exs.A4 and A5 are proved. P.W.5 did not say with reference to Exs.A4 and A5, that the such spare parts are not used. Even according to P.W.5, he has deducted deprecation which need not be the loss. In case of replacement with new spare parts there need not be any deduction towards depreciation.

(iii). Full Bench of High Court of Kerala at Ernakulam in a case between **M. M. Joseph vs. Venkata Rao M and Ors.**¹, addressed this point as to purchase of new spare parts for making the vehicle roadworthy. The third-party claimant is entitled for actual cost of the spare parts. After referring to a catena of decisions, the full Bench made relevant observations in para Nos.19 to 21, and set aside the deduction of 35% made towards depreciation in the said case.

19. *In the case of M.A.C.A. No. 990/2005 (supra), the Division Bench took a view that when a vehicle is repaired, the owner will get a better utility for the vehicle as if it is a new vehicle and therefore depreciation is justified to arrive at the actual damage. But what is to be considered is whether these spare parts are required for making the vehicle roadworthy. One cannot expect a person to repair his vehicle with old spare parts. Therefore, necessarily, new spare parts will have to be purchased for making the vehicle roadworthy. Even assuming for the sake of argument that the utility of the vehicle might be increased on account of new spare parts being fitted into the vehicle, it is by way of restitution, to enable the claimant to use the vehicle as he was using it before the accident. In other words, without effecting such repairs, it may not be possible for the claimant to put the vehicle on road. Therefore, making a further reduction to the actual value of spares will in effect amount to reduction from the actual loss suffered by him.*

20. *Hence we are of the view that the judgment in Abraham v. Johnny [2009 (4) KLT 679] does not lay down the correct law and we approve the judgment in T.A. Kuriakose v. Ittoop (M.A.C.A No. 693/2004).*

¹ 2016 SCC OnLine Ker 4646: AIR 2016 KERALA 101 : M.A.C.M.A.No.1373 of 2013

21. *In the result, the appeal is disposed as under:*

The award passed by the Tribunal is modified. The deduction of 35% from the assessed amount of Rs.4,14,244.85 ps. is set aside. The claimant is entitled for a further amount of Rs.1,44,986/-. In all other respects, the award is confirmed.

34. In a case between **G.Md. Masoom vs. S.K. Khader Vali and another**², the Division Bench of the composite High Court of Andhra Pradesh at Hyderabad observed that a third party whose vehicle is damaged in a motor accident is entitled to claim not only compensation for the damage caused to the vehicle but also compensation towards the loss of business due to non-availability of the vehicle during the repair period. The relevant observation in para 21 reads as follows:

21. It is observed by the Madras High Court in Rajendran v. Selvaraj, 2002 ACJ 104, that the Claims Tribunal can entertain the damages to the property including loss of business income after considering the entire law. In all the aforesaid decisions, it is clearly stated that the owner is entitled to claim damages for the vehicle involved in the accident. The Civil Court has no jurisdiction to award compensation after the amended provisions of Sections 165 and 166 of the Act which have come into force after the motor vehicle accident of 1988 as there is express bar of entertaining by Civil Court and the Civil Court cannot entertain a claim in respect of damage caused to the vehicle involved in the accident. The owner has been conferred with a right of presenting an application for compensation under Section 166 of the Act in respect of damages. The only thing that has to be decided is whether computation can be made in respect of business loss, which is part of the policy of

² 2003 SCC OnLine AP 1197: 2004 (2) ALD 324 (DB)

insurance and whether the Tribunal has got jurisdiction under the head - Damages of compensation. It is clear from the principles laid down by the decisions rendered by the English Courts that the loss occasioned due to non-availability of the vehicle under repair can be awarded during the period of repair. It is not stated in those decisions that the entire business loss of income can be entertained on awarded. What is contemplated under the law is that the loss of income sustained during the period of vehicle under repair is an incidental loss, which resulted due to the damages to the vehicle, and it can be awarded and the Tribunal alone can entertain such a thing. Section 166 mentioned about the application to be made for compensation. Section 165 says that compensation can be claimed for damages to any property of a third party so arising out of the use of motor vehicle. Does it cover the loss of incidental income of the owner? It must be held that loss of incidental income due to non-availability of vehicle, which is under repairs is covered. That has to be taken into consideration while awarding compensation. It cannot be stated that the incidental loss sustained by the owner due to the damage to the vehicle and due to non-availability of the vehicle cannot be taken into consideration. The Court has to take into consideration about the ousting of Civil Courts jurisdiction for claiming compensation in respect of damages to any property. The incidental loss of income has to be taken into consideration while awarding compensation for damages to the property. The Single Judge of this Court has rightly observed that there cannot be two forums for claiming compensation. The incidental loss of income is part of the damages to be awarded by way of compensation. The same view has been taken by the English Courts. The method that has to be adopted is to calculate the loss of income due to non-availability of the vehicle. If the vehicle is insured with the Insurance Company, it is liable to pay damages which inclusive of incidental loss of income due to non-availability of the vehicle. The incidental loss of income differs from

business loss. The business loss has to be arrived at after taking into consideration of non-availability of the vehicle on the particular period and its availability after repairs. We are of considered view that just compensation has to be arrived at by calculating the compensation towards damages including the incidental loss occasioned during the period of non-availability of the vehicle. On a consideration of the entire law, we are of the view that the owner of the vehicle is entitled to claim incidental loss of income under the head Damages caused to the vehicle before the Tribunal and the Civil Court has no jurisdiction. We also state that the Insurance Company is liable to pay compensation towards damages caused to the vehicle, which includes the incidental loss of income being part by business loss.

35. In view of the above, this Court finds that the claimant is entitled for compensation towards the damages to the extent of bills covered by Exs.A4 and A5 i.e.Rs.70,566/- and Rs.35,700/- totaling Rs.1,06,266/-. The claimant is also entitled to compensation towards the loss arising from the inability to use the vehicle at the rate of Rs.500/- per day for a period of one month, totaling to Rs.15,000/-. Considering the facts and circumstances of the case and the length of time etc. interest is awarded at the rate of 6% per annum.

36. In view of the discussion made above, the claimant is entitled for compensation of Rs.1,21,266/- and the compensation awarded by the learned MACT requires enhancement to that extent. Point framed is answered accordingly.

Point No.2:

37. In the result, the appeal is allowed in part as follows:

- (i) The compensation awarded by the learned MACT in M.V.O.P.No.36 of 2010 at Rs.41,400/- with interest at the rate of 6% per annum is modified and enhanced to Rs.1,21,266/- with interest at the rate of 6% per annum from the date of petition till the date of realization.
- (ii) Respondent Nos.1 and 2 before the learned MACT are jointly and severally liable to pay the compensation. However, Respondent No.2/ Insurance Company is liable in view of the Insurance Policy.
- (iii) Time for payment/deposit of the balance amount is one month.
 - (a) If the claimant furnishes the bank account number within 15 days from today, the Respondent No.2/ Insurance Company shall deposit the amount directly into the bank account of the claimant and file the necessary proof before the learned MACT.
 - (b) If the claimant fails to comply with (iii)(a) above, respondent No.2 / Insurance Company shall deposit the amount before the learned MACT and the claimant is entitled to withdraw the amount at once on deposit.
- (iv) There shall be no order as to costs in the appeal.

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

A. HARI HARANADHA SARMA, J

Date:01.07.2026

Note:L.R. copy to be marked.

(B/o).

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Whether the order is:

Speaking		Reasoned	✓
Reportable	✓	Non-reportable	

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.833 of 2012

1st July, 2026

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