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NATIONAL JUDICIAL ACADEMY



REFRESHER COURSE FOR MACT COURTS

(P-982)

RAPPORTUER: NIMMY SAIRA ZACHARIAH

4th Year, 5 year B.A LL.B Integrated Course

KERALA LAW ACADEMY LAW COLLEGE

Submitted to :

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Law associate at National Judicial Academy,

Programme co-ordinator

ABOUT THE CONFERENCE

A four day refresher course for MACT (Motor Accident Claim Tribunal) COURTS from April 7- April 10, 2016 was organised by the National Judicial Academy under the leadership of Law Associate- Shruti Jane Eusebius. The objective of the course was to help the judges of MACT courts to tackle the various issues that arise with regard to motor vehicles accident tribunal.

The entire conference was divided into 15 sessions. Eminent personalities addressed the gathering on various issues under MACT. The resource persons were:

- Dr. S.B.N Prakash, (Adjunct Professor, National Law School of India University)
- R. Chandrasekhar, (General Secretary, General Insurance Co.)
- Sumant Kumar, (ICICI LOMBARD General Insurance Co. Ltd)
- Abhishek Dabli, (ICICI LOMBARD General Insurance Co. Ltd)
- Saurabh Jaiswal, (ICICI LOMBARD General Insurance Co. Ltd)
- Dr. Arun Mohan, (Former Senior Lawyer Supreme Court)
- S. Srinivasa Raghavan, (Advocate High Court of Chennai)
- Srilatha Juvva, (Professor at Tata Institute of Social Science)
- Saratha Devi, (Advocate High Court of Chennai, Lecturer School of Excellence, Chennai)
- Justice Mridula Bhatkar, (High Court of Mumbai)
- Dr. Harish Shetty, (Psychiatrist)
- Dr. Leonard Ponraj (Medical Practitioner at Government Hospital, Chennai)
- Justice K.J Sengupta, (Lokayukta, Sikkim)

The list of 30 participants from across India are given below:

Sl.no	NAME	DESIGNATION
1.	Mr. Subhash Chand VII	A.D.J., Allahabad, U.P.
2.	Mr. Himanshu Bhatnagar	Additional District & Sessions Judge, Allahabad, U.P.
3.	Mr. A.V. Ravindra Babu	District & Sessions Judge, Rajahmundry, A.P.
4.	Ms. Sabbi Premavathi	Addl. District & Sessions Judge, Kurnool, A.P.
5.	Mr. Aejaazuddin Salauddin Kazi	District Judge, Member MACT, Mumbai, Maharashtra
6.	Mr. M.T. Asim	Member, M.A.C.T., Nagpur, Maharashtra.
7.	Ms. Sikha Sen	A.D.J., Barrackpore, Calcutta, WB
8.	Ms. Saroj Nand Das	Additional District & Sessions Judge, Khairagarh, Chhattisgarh.
9.	Mr. Govind Narayan Jangde	Additional District & Sessions Judge, Raipur, Chhattisgarh.
10.	Ms. Barkha Gupta	Additional District & Sessions Judge, Delhi.
11.	Mr. Mohinder Virat	Delhi Higher Judicial Services (DHJS), Officer of District & Sessions Judge, Delhi.
12.	Mr. Abhijit Bhattacharyya	Member, M.A.C.T., Dhubri, Guwahati
13.	Mr. P.T. Patel	Additional District & Sessions Judge, Gujarat.
14.	Mr. Madan Kumar	Additional District & Sessions Judge, Mandi, H.P.
15.	Ms. K. Bhagya	Senior Civil Judge, V Addl. Small Causes Judge, Bengaluru, Karnataka.
16.	Mr. V.K. Rajan	District & Sessions Judge, MACT, Trivandrum, Kerala.
17.	Mr. P.P. Saidalavi	Dist. Judge, MACT, Thrissur, Kerala.
18.	Mr. Awdhesh Kumar Gupta	Ist Addl. District & Sessions Judge, Katni, M.P.
19.	Ms. Norin Nigam	Additional Dist. Judge, Balaghat, M.P.
20.	Mr. T. Balakrishnan	Special District Judge, MCOP Cases, Madras, T.N.
21.	Mr. K. Poorana Jeya Anand	District Judge for MCOP Cases, Tanjore Madras, T.N.
22.	Ms. Ngaineikim Kipgen	P.O., MACT, Imphal West, Manipur.
23.	Mr. Narendra Kumar Samal	Member IInd MACT, Sambalpur, Odisha.
24.	Mr. Laxmidhar Biswal	Member, State Transport Appellate Tribunal, Cuttack, Odisha.

25.	Mr. Aman Deep Dewan	Additional District & Sessions Judge, Kurukshetra, Haryana.
26.	Mr. Madan Gopal Vyas	Judge, MACT, Barmer, Rajasthan.
27.	Mr. Pooran Kumar Sharma	Judge, MACT, Jaipur, Rajasthan.
28.	Mr. Vishwajeet Pandey	Additional District & Sessions Judge, Tripura.
29.	Ms. Sankari Das	Additional District & Sessions Judge, Agartala, Tripura.
30.	Mr. Gurubaksh Singh	Additional District & Sessions Judge, Garhwal, Uttarakhand.

PROGRAMME SCHEDULE

DAY 1

<u>SESSION</u>	<u>SUBJECT</u>
1.	<i>Role of Motor Accident Claims Tribunal</i>
2.	<i>An Insight into the Insurance Sector with Respect to Motor Accident Claims (Contd.)</i>
3.	<i>Library Reading</i>
4.	<i>Perspectives on the Motor Vehicles Act</i>

DAY 2

5.	<i>Liability Of Insurance Companies in Motor Accident Claims with respect to Gratuitous Passengers, Cancelled Policies and Commencement of Policies</i>
6.	<i>Civil Law and Procedures applicable to MACT Cases</i>
7.	<i>Tools and Techniques to Expedite MACT cases</i>
8.	<i>Understanding Disability</i>

DAY 3

9.	<i>Liability of Insurers for Compensation on the basis of No Fault Liability under Section 163A</i>
10.	<i>Issues & Challenges Faced by Motor Accident Claims Tribunals</i>
11.	<i>Medical & Psychological Needs of Victims of Road Accidents</i>
12.	<i>Assessing Non-Pecuniary Damages and Loss in MACT Cases</i>
13.	<i>Ensuring Gender Justice in Awarding Compensation in MACT Cases</i>

DAY 4

14.	<i>Assessment of Disability</i>
15.	<i>Evidentiary Issues in MACT Cases</i>

DAY 1

SESSION 1

SPEAKER: S.B.N PRAKASH

SUBJECT:ROLE OF TRIBUNALS

Shruti Jane, the programme co-ordinator, welcomed all the participants and the resource person. A self-introduction session was also conducted before commencing the session.

The speaker started off the session by giving a brief lecture on the concept of justice. He described the concept of justice as laid out in the Preamble of the Constitution of India. The concept of justice includes political justice, economical justice and social justice. He questioned whether we have attained these three types of justices in our country and whether the common man is in a position to have these types of justices. He also said that justice should not be twinkling up above the sky like a diamond but it should be one among us.

The speaker then compared the situation in India with the western countries. In western countries, soon after an accident, the insurance company will offer help to the victim but in India, most of the vehicles are running even without a proper insurance scheme. He also criticised the attitude the people of India, about insuring their vehicle. Here, the people think insuring the vehicle is a waste of money, even though the law in India has made it mandatory to insure one's own vehicles.

Another topic that was brought to attention was the difference between compensation and damages. Damages are something that comes for contractual liability when we suffer from the denial of a right in civil cases. In earlier times, English courts never used to consider a contract to be mandatory. They worked on the principle-everyone that has rights but one should not infringe another person's right when we live with our own rules.

Speaker delved into the history of history legislations in India related to motor vehicles and mentioned that were tortious in nature in the beginning. At that time, we did not have a number of motor vehicles because Indian society mostly depended on manpower rather than on mechanised technology. Later on we started to depend on vehicles for transportation. Many codified laws have mentioned about tortious liability. An apt example for this according to the speaker is the Workmen Compensation Act, per which, if a workman met

with an accident and he suffered injuries the employer had to pay compensation but it was not mentioned earlier.

The Motor Vehicles Act of 1939, at first it did not have any provision for compensation and later the Motor Vehicle Act was amended by -Act No.110 of 1956 by which Section 93 to 109 with reference to third party insurance and Section 110(A) to 110(F) and with reference to creation of Motor Accident Claims Tribunal and procedure for adjudication of claim were added. Initially, the liability was restricted to a particular sum but after 1982 the liability of the Insurance Company has been made unlimited and even the defences of the Insurance Companies have been restricted so as to ensure payment of compensation to third parties. Section 110 was introduced to the act to sort out the issues of compensation.

The speaker then talked about the concept of 'AIR' (Accident Information Report), its induction into the act and its advantages and how it should be implemented.

Another aspect the speaker talked was about the compensation payment to victims. Who shall be legally liable to pay compensation amount to the victim and the amount to be paid to a victim? He cited a case *Jai Prakash v. National Insurance Co* to explain the concept. Speaker also explained the concept of tribunal. The word tribunal means to enquire. Section 165 facilitate for the establishment of tribunals in states, this is to enable a poor person who is unaware of his rights to attain justice.

He concluded by mentioning the steps to conduct proper enquiry in tribunal:

1. ***Whether AIR is with all necessary details?***-It means that in case of forensic details the judge need to enquire about all before awarding compensation.
2. ***Whether the information would do justice to society?*** - If no justice is delivered the concept of justice as enshrined in the constitution will be a myth. A judge's role is pivotal in nature &the dispatched amount should be given in the court itself.
3. ***Awarding compensation on account of individual capacity***-The speaker explained his third point using an example. In an accident, injury was caused to three people A- doctor, B- vegetable vendor, C-engineer. Here the court should take into account of the earning capacity of each and how the injury would affect their future earning He also relied upon the *Sarala Varma* judgement to bring more clarity to this point. Before concluding he stated some cases like *G.M motors case*, *Helen.c. Rebello v. Maharashtra State Road*, *Yadav Kumar and National Insurance Co.*

Then the participants dispersed for tea.

SESSION 2

SPEAKER: R. Chandrasekhar

Panellists: SUMANT KUMAR, ABHISHEK DABLI, SAURABH JAISWAL

SUBJECT: AN INSIGHT INTO THE INSURANCE SECTOR WITH RESPECT TO MOTOR ACCIDENT CLAIMS

This session began with the introduction of the panellists by the co-ordinator followed by the lecture by R. Chandrasekhar. He said that the judges should be well aware of the terms and application of law relating to contract act. He then went onto say that they settle around 3 crore insurance claim every year. He then produced a data from 2012, regarding the registration of vehicles.

Total vehicles registered	15.94 crores
Passenger vehicle	2.15crores(insured-1.92 crores)
Commercial vehicle	1.25 crores(insured-0.54)
2 wheelers	11 crores(insured-3.6 crores)

The speaker posed the question as to how would the insurance companies be able to tackle the menace of vehicles dropping out of insurance. One of the participants asked the speaker “What is the profit gain of an insurance company?” The speaker pointed out that around 3000 crores are collected as premium amount in a year and this is collected in the previous year and only 2% of third party claim cases come up and that too only in the assessment year.

At this juncture, Saurabh Jaiswal representing ICICI Lombard General Insurance Co. stated that last year their company settled around 24,000 cases and out of which around 55% was settled through Lok Adalat. Another interesting fact that he said was that 60% of the vehicles are not insured as per the data but -in 99% of the cases before the court would be registered vehicles.

Then the speaker went onto explain the problems that Insurance Co. has to face while carrying out its duty

1. ***There is no bar of limitation***- The act does not specify a limit before which a case needs to be filed for claiming compensations. There are cases where the accident took place in 2006 and the parties filed for compensation in 2015. The parties need not show that why it took them nearly 9 years to file a case.
2. ***Defence for small cases***- Insurance Company cannot claim defence for small injury cases, such case should be kept away from claiming compensation.
3. ***Issue related to evidence***- As there arises a delay in filing the claim the chance of getting evidence against the claimant is less.
4. ***Fraud in Third party v. employee contract***- The speaker used an example to site the fraud which aroused using this type of contract. A person was shown as a driver of a company and his leg was amputated in an accident and an insurance claim of 12 lakhs was awarded. The same person in 2012 claimed for compensation for another accident. This case was before ICICI LOMBARD; on finding out the fraud they immediately approached the high court to report the fraud. A commission, SIT was formulated for the enquiry.
5. ***Unable to calculate disability***- The judges sometimes will award compensations not in proportion to the injury sustained.

Another type of fraud the speaker brought to the knowledge of the participants is tying a fuse wire around when taking x-ray of a bone to resemble a hairline crack to receive compensation for fracture. He relied on Jayaprakash v. National Insurance Co to substantiate his point more. The speaker also mentioned the lack of proper mechanisms for implementing the regulations to be followed to check fraud.

The speaker then mentioned about the four areas they are working on, which are:

1. To ensure registration of vehicle
2. To provide speedy justice
3. Third party claims
4. To develop the fraudulent department to identify a case of fraud

The participants also shared their own experiences about how they tackled fraud in their own courts and pointed about the inefficiency shown by the lawyers representing the insurance company. The session was an interactive one and it served the purpose of sharing the experiences and knowledge amongst attendees

Session was dispersed for lunch.

SESSION-3

LIBRARY SESSION

SESSION: 4

SPEAKER : ARUN MOHAN

SUBJECT: PERSPECTIVE ON THE MOTOR VEHICLES ACT

The session began with the speaker stating the defect in the Indian judiciary. India is a country with the population of around 1.3 billion but the Lord Almighty has deputed and confirmed the power to adjudicate only on the 17,000 judicial officers.

In this session, he explained material fact, evidentiary fact and principle of application of law. Using, his own reference material which was distributed among the participants. He talked about the socio- economic condition of our country. He put forward the 5 socio-economic strategic chart questions to the participants-

1. What is the extent of injustice suffered by a citizen at the hands of another and which remains without effective recourse or remedy?
2. What is the extent of injustice suffered by a typical citizen due to short delivery of social goods and services and opportunities?
3. Viewed from the perspective of the person in need of justice, what is the affordability of access to justice?
4. Of those who come to court, how many are being unable to bear the delays and mounting costs and losses and surrender to the wrong doer without receiving justice?
5. What can be done to make access to justice effective, practical, and a reality for every citizen?

According to him, only those material facts which are disputed in the pleadings emerge as fact-in- issue. In case of an admitted fact, evidence is not needed but in the case of disputed items like principle documents- proof of the document, what does the document prove ? All such aspects have to be considered.

He also said that on settling dispute, we need to take into consideration 3 elements:

1. Fact
2. Law
3. Application of law

According to the speaker, about 95% of the time of the court is consumed in learning the fact in dispute. He also mentioned the acceptable percentage of errors

- ❖ Genuine misperception- 5%
- ❖ Acceptable error-5%
- ❖ Negligence-10%
- ❖ Beyond 20%- It is an intentional error and it will demand a huge amount of time of the court.

The speaker then said that if one is able to distinguish between material fact and evidentiary fact it will be easy for them to settle the dispute. H also explained the concept of beyond reasonable doubt and presumption of innocence.

The speaker concluded by saying about how a judgement can be delivered and also how a judge should deliver the judgements. According to him, orderly placement of similar judgements can bring out better judgements.

DAY 2

SESSION-5

SPEAKER: MR. S.SRINIVASA RAGHAVAN

SUBJECT: LIABILITY OF INSURANCE COMPANIES IN MOTOR ACCIDENT CLAIMS TRIBUNAL WITH RESPECT TO GRATUITOUS PASSENGERS, CANCELLED POLICIES AND COMMENCEMENT OF POLICIES

Shruti Jane the programme co-ordinator introduced the speaker to the participants and welcomed all the participants once again to the conference.

Sri. Srinivasa Raghavan relied on the judgment of the Full Bench of Madras High Court in United India Insurance Co. v. Nagammal reported in 2009 (1) CTC page 1 (FB) to explain his subject.

The said judgment of the Full Bench of the Madras High Court has a persuasive effect. Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time, the following picture emerges:

- (i) The Insurance Policy is required to cover the liability envisaged under Section 147, but wider risk can always be undertaken.
- (ii) Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defense, obviously it is required to satisfy the decree and the award. Where it is successful in its defense, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).
- (iii) Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

- (iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of “pay and recover”, as statutorily recognized in Section 149(4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.
- (v) Where, by relying upon the decision of the Supreme Court in Satpal Singh’s case, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the Appellate Court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the owner.
- (vi) No such direction can be issued by any Trial Court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur’s case merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no Trial Court is expected to decide contrary to such decision.
- (vii) Where, however, the matter has already been decided by the Trial Court before the decision in Baljit Kaur’s case, it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of “pay and recover” should be applied or as to whether the claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be.”

Following cases were also cited by the speaker:

1. Mallawwa & Ors v. Oriental 1999 (1) SCC 403
2. New India v. Satpal Singh 2000 (1) CTC 370 SC
3. New India v. Asha Rani 2003 (1) ACJ page 1 SC
4. National v. Baljith Kaur 2004 (2) ACJ page 428 SC
5. National v. V.Chinnamma 2004 (3) ACJ page 1909 SC
6. National v. Challa Bharathamma 2004 (8) SCC page 517
7. Oriental v. Brij Mohan 2007 (7) SCC 56
8. New India v. Veduvathi & Ors 2007 (9) SCC 486
9. National v. Prema Devi 2008 (1) TNMAC 348 SC
10. National v. Cholleti Bharathamma 2008 (1) ACJ 268 SC

11. National v. Kausalya Devi 2008 (3) ACJ page 2144 SC

12. Royal Sundaram v. P.Ayya Kannu 2012 (1) TNMAC 89 (DB)

The speaker then explained section 147, as it is the most misinterpreted sections of all and it is difficult to decipher it in the manner we understand. He then moved to the 4 ingredients that he himself has formulated which need to be considered while deciding a motor vehicle accident case-

1. Whether the policy of insurance is in force?
2. Whether the victim is a third party?
3. Whether the operation of 3rd party is removed from the definition of 3rd party?
4. Whether policy is cancelled or not?

Then he moved on to explain the liability of insurer when the policy of insurance stay cancelled. According to him, the Law relating to Liability of the insurer when the policy of insurance has been cancelled on account of dishonour of the cheque meant for payment of premium is also debatable. The following case laws are pertinent. He discussed the case Supreme court judgement Oriental v. Indrajit Kaur 1998(1)SCC 371 the insurer, even if he was entitled to avoid the policy for not having received premium, held, none-the-less liable for third party risk as the public interest served by an insurance policy must prevail over the accident of insured. The insurance company is liable to indemnify third parties in respect of the liability which that policy covered and to satisfy the awards of compensation in respect thereof notwithstanding the entitlement (upon this question, the Hon'ble Supreme Court did not express any opinion) to avoid or cancel the policy for the reason that the cheque issued for payment of premium thereon had not been own honoured.

. The Hon'ble Supreme Court held that the insurance company was not absolved of its obligation to third parties for the reason that he did not receive the premium. Its remedies in this behalf are to lay against the insured only.

The Hon'ble Supreme Court further held that the insurance company itself is responsible for the predicament. Since, it has issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of Sec.64 VB of the Insurance Act.

The Hon'ble Supreme Court has finally held that despite the bar created by Sec. 64-VB of the Insurance Act, the insurance company has issued a policy of insurance to cover the vehicle without receiving the premium by cash and by receiving the cheque and hence the insurance company has invited the risk. In this aspect, Sec. 64 VB of the Insurance Act is relevant.

Then the speaker described in detail about section 64 of MV act. Section 64 reads as follows:

No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed, unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

For the purpose of this Section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insured. He further used illustrations to explain the same

Manner of Premium Payments: The premium to be paid by any person proposing to take an insurance policy (hereinafter referred to as the "Proposer") or by the policy holder to an insurer, may be made in any one or more of the following manner(s); viz.,

- a) Cash
- b) Any recognized Banking Negotiable Instrument, such as cheques including demand drafts, pay orders, banker's cheque drawn on any Scheduled Bank in India.
- c) Postal Money Orders.
- d) Credit or Debit Cards held in his name
Bank Guarantee or Cash Deposit.
- f) Internet.
- g) E-Transfer.
- h) Direct Credits via Standing Instructions of the
Proposer or the Policy Holder or the Life insured
through bank transfers; and
- (i) Any other method of payment as may be approved by the Authority from time to time.

Then he explained to the participants the concept of commencement of risk. In all cases of risk covered by the policy issued by an insurer, the attachment of risk to an insurer will be in consonance with the terms of Sec.64(VB) of the Insurance Act and except in the cases where the premium has been paid in cash, in all other cases, the insurer shall be at risk only after the receipt of the premium by insurer.

Provided that in the case of a policy of general insurance that where the remittance made by the Proposer or the policy holder is not realized by the insurer, the policy shall be treated as void, ab initio.” The manner of receipt of Payment of Premium has undergone a change. He further explained that in view of the said Regulations enacted in 2002, the Hon’ble Supreme Court of India has held in the following cases that contract of insurance stood rescinded due to failure to consideration and intimation to this effect has been given to all concerned - on principles of law, insurance company not liable to compensate third party for the accident. But the Hon’ble Supreme Court in exercise of its jurisdiction under Sec. 142 directing the respondent insurance company to compensate the appellant and to recover the amount from the vehicle owner. Thus, it is very clear that after the Regulations in 2002, the insurance company is not liable to compensate the claimant and to indemnify the owner of the vehicle since, the liability arising out of the contract of insurance would have to be met only if the contract is valid.

The last subject which he discussed is about the liability of insurer vis-à-vis commencement of insurance policy. He said that the subject has been settled by the Apex court long back and many at times, but still various High Courts and Tribunals have been rendering contrary judgments warranting a discussion.

He wrapped up the session by stating some cases relating to liability of insurance company before the date and time mentioned in the policy of insurance:

1. New India v. Ram Dayal 1990 (2) ACJ 545 SC
2. National v. Jiju Bai 1997 (1) ACJ SC
3. Oriental v. Sunitha Rathi 1998 (1) ACJ SC 12
4. New India v. Seetha Bai 2000 (1) ACJ SC 40
5. New India v. Bagawathi Devi 1999 (2) ACJ SC 534
6. National v. Sobina Lakai 2007 (3) ACJ 2043
7. National v. Ponniah 2004 (1) TNMAC 63 DB
8. National v. Geetha 2004 (1) TNMAC 174 DB

SESSION 7

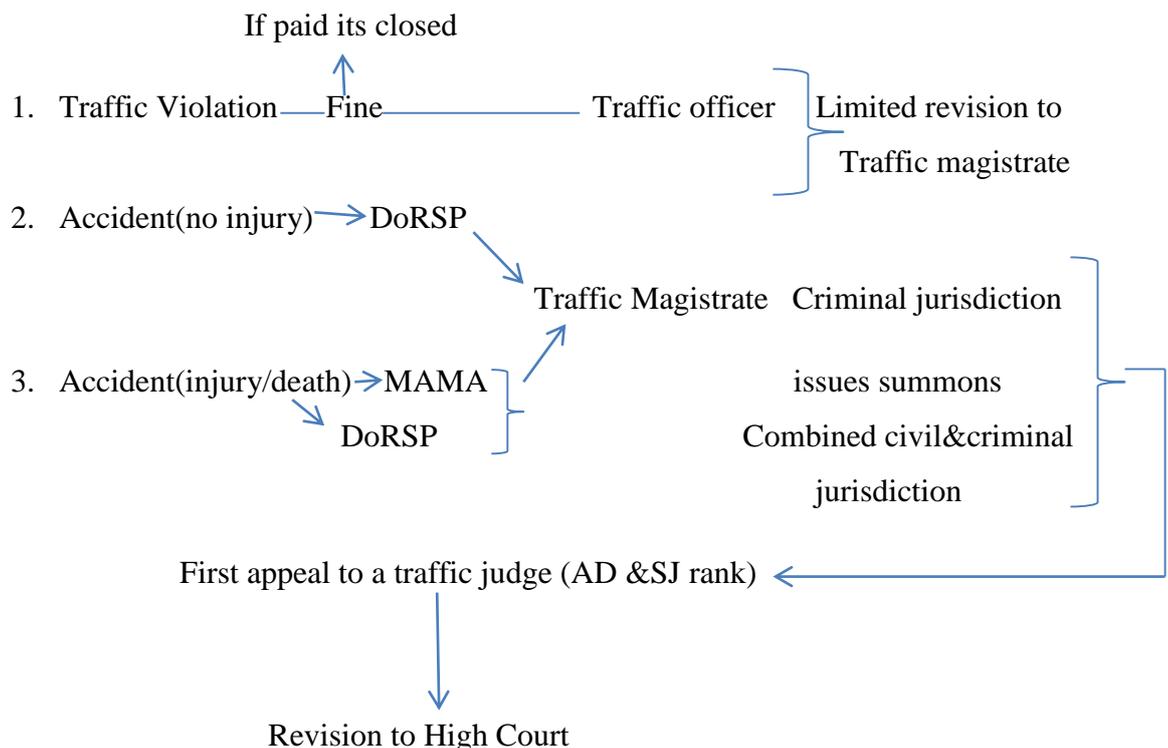
SPEAKER:DR.ARUN MOHAN

SUBJECT: TOOLS AND TECHNIQUES TO EXPEDITE MACT CASES

The speaker began the session with a friendly interaction with the participants. He asked them the real meaning of the word ‘namaskar’. Participants from the different parts of India gave their own views points. Then he said one must not give too much importance to case laws for deciding a case because there will always be contradictory judgements.

He advised the officers to note down the problems in substantive law and procedural law when they come across difficulties and to research on it to have a better understanding of the situation and this would help them to deliver justice in a speedy manner. He also said that good judgements can be given through innovation and the judiciary lacks in this concept which need to be improved. In India, we cannot completely prevent accident but we can give adequate compensation and he also proposed a traffic court system for the same.

The proposed traffic court system:



(MAMA -Motor Accident Mediation Authority)

The very pertinent point he mentioned is the need of Motor Vehicle Mediation Authority(MAMA). He said the court approaches a case in a conventional method that means which involves a number of procedures such as filing the complaint, sending notice, written statement, summoning the documents which in turn requires a lot of time of the judicial officer. According to him, a mediation authority will be more productive as it requires less time and the justice will be delivered speedily.

Then he moved on to conduct an exercise for the identification of question of law, evidentiary fact and principle of application of law. He used the national academy reference material compiled by the co-ordinator for the exercise. In the exercise session, the speaker gave the freedom to the participants to choose cases from the reference materials to distinguish between question of law, evidentiary fact, and principle of application of law. The cases they did are:

1. M.K Gopinathan v. Krishna and Ors 2014(5) SCALE 184
2. S.Perumal v. K. Ambika & Ors 2015(2)SCALE 646
3. Deepak Girisha Sni v. United India (2004)5SCC 385
4. HDFC Bank Ltd v. Kumari Reshma (2015) 3 SCC 679
5. G. Dhanasekhar v. Metropolitan Transport Corporation Ltd

If one masters in the identification of question of law, evidentiary fact, and principle of application of law, then the person can deliver reasonable judgement in minimum time. This will help the judge to give just and fair compensation to victims.

He then explained the concept of contributory negligence as one of the participants has asked for. He also referred to the set of compilation made by him which was distributed among the participants for the further clarifications on various other aspects.

SESSION 6

SPEAKER :Dr.ARUN MOHAN

SUBJECT: CIVIL LAW AND PROCEDURES APPLICABLE TO MACT CASES

The speaker began the session by commenting about justice as a wider connotation than merely settling a dispute between two parties or determining whether a person is guilty of the crime which he is accused by the state. Justice in today's day and age and democratic set-up, includes ensuring that every citizen gets his aliquot share of social goods and services, and opportunities his human rights and also treated fairly.

He then asked the participants to refer the study material which he was provided and to ask themselves the 5 questions that he has written down to analyse how effective our judiciary system should be made-

1. What is the extent of injustice suffered by a citizen at the hands of another and which remains without effective recourse or remedy?
2. What is the extent of injustice suffered by a typical citizen due to short delivery of social goods & services and opportunities?
3. Viewed from the perspective of the person in need of justice, what is the affordability of access to justice?
4. Of those who come to court, how many, being unable to bear the delays and mounting costs and losses, surrender to the wrong doer without receiving justice?
5. What can be done to make access to justice effective, practical, and a reality for every citizen.

He then mentioned about how we can bring a change in the judiciary in the near future. Some of the procedural tools and practices as are permissible under the existing Code of Civil Procedure 1908 will help contain the ability of wrong doer to create confusion, and also enable the court to exercise control. Adoption of other practices/tools will further increase the efficiency of the courts. By just moulding the practices within the existing framework of law, delays can be substantially curtailed, cost of justice reduced and many of the ills faced by our system remedied-

1. ***Enforce responsible pleading:*** To give an effective justice the pleading has to be clear and specific. There cannot be any doubt that purity in pleadings is essential.

Rule 16 of Order 6 of CPC enables the court at any stage of the proceedings to strike out or amend any pleadings that are unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the suit.

2. **Preparatory proceedings:** Documents, interrogatories, directions: After pleadings there is so much that can be done till the framing of issues, to help achieve efficiencies. He also pointed out a Supreme Court decision in Ramrameshwari Devi v. Nirmala Devi 2011 8 SCC 249:

“The court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the act. If this exercise is carefully carried out it would focus the controversies involved in the case and help the court in arriving truth of the matter and doing substantial justice”

3. **List of dates and a list in 3 columns:** One useful form of directions is calling for a list of dates. According to the speaker, it would give us good idea of the happenings of events related to the case. He also stated that the utility of Section 30 of CPC was recently emphasised by the Supreme Court Maria Margarida reads as:

“In civil cases adherence to section 30 would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges.”

This provision can be used by at any stage of the proceedings and on occasions more than one. It can be even used at appellate stage or for the purpose of execution

4. **Record the statements of the parties before framing issues:** This would help the court in awarding speedy redressal. The court can also narrow down the scope of the controversy both during the statement by asking pertinent questions and thereby hearing the parties and passing orders.
5. **Use the tool of interim costs:** Every posting of a case before the court has a cost to the court and to the parties. With so many posting turning out nothing useful, the cost mounts and so does frustration. Thus adjournments need to be tackled by considering the overall circumstances of the case and the previous record, granting only short period adjournments to tackle the cost incurred.
6. **Trial and evidence:** Proof of documents and proof of facts must be given attention in advance so that no loopholes or shortcomings are left at the trial.
7. **Final arguments:** The trial is followed by final argument. List of heads is an essential for final argument. The speaker mentioned a case regarding this aspect Kiran Chabra v. Pawan Kumar Jain which consists of useful guidelines on their form and pattern.

8. ***No deprivation of the successful party remains unrequited:*** One factor which causes litigation to accrue is that the general perception that the other party will tire out and abandon or settle for less or pay up this means that the intended benefit to the party in the wrong that he was looking for.
9. ***Penalty*** :The speaker classified the wrongs into 3:
 - The act which finally turns out as the cause of action for litigation like causing injury to property, breach of contract
 - Wrongs of post dispute behaviour, stance at mediation
 - It primarily manifests impurity in presentation and impropriety in conduct
10. ***More readily order prosecution for perjury in pleadings or evidence:*** The quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misinterpretation and suppression of facts in the court proceedings.

The session was concluded and the meeting was dispersed.

SESSION 8

TOPIC: UNDERSTANDING DISABILITY- I

SPEAKER: JUVAA SREELATHA(Professor at Centre for Disability Studies and Action, Tata Institute of Social Science)

The session began as an interactive session between the speaker and the participants about need of humanity and how a judge should cater to the development of humanity in this era. The speaker quoted the words of chief of Seattle

“When you know who you are, when your mission is clear and you burn the inner fire of unbreakable with no cold can touch your heart no delays can dampen your purpose. You know that you are alive.”

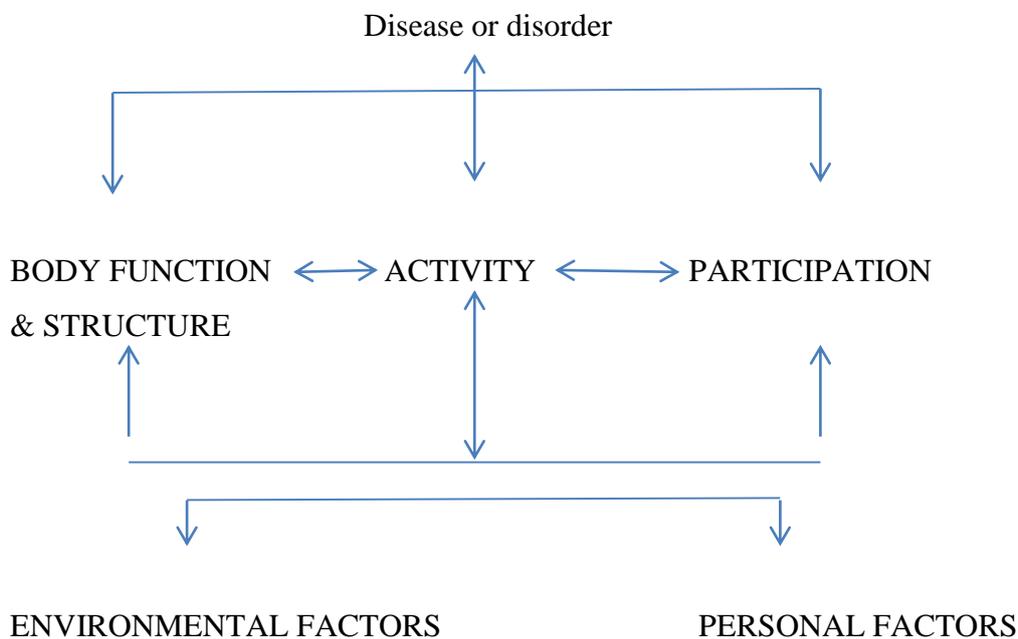
Through this quote, she conveyed a message that even the loop holes in the legal system should not deny a judge from rendering justice to the society.

She defined the terms disability and impairment respectively:

Disability is “the restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being. It describes a functional limitation or activity restriction caused by impairment. Disabilities are descriptions of disturbances in function at the level of the person. Examples of disabilities include difficulty seeing, speaking or hearing; difficulty moving or climbing stairs; difficulty grasping, reaching, bathing, eating, toileting”.

Impairment is “any loss or abnormality of psychological, physiological, or anatomical structure or function”. Impairments are disturbances at the level of the organ which includes defects in or loss of a limb, organ or other body structure, as well as defects in or loss of a mental function. Examples of impairments include blindness, deafness, loss of sight in an eye, paralysis of a limb, amputation of a limb; mental retardation, partial sight, loss of speech.”

KF Model of disability



She explained disability by showing the KF model of disability.

The speaker went on to explain impairment in detail. She described the various types of impairments:

1. Locomotor disability- A person with such disability will have limited movement of body parts this may be caused due to injuries disfiguration, disease, in any part of the body like spine, brain or nerves.
2. Sensory disability-This disability arouses in a person whose sensory elements are not function as that of a normal human being and loss of eyesight, hearing capacity, etc, the examples of sensory disability.
3. Intellectual Impairment- It is another term for mental retardation. People who is unable to behave normally as that of a prudent person are termed to have intellectual impairment
4. Learning disability- this type of disability is not associated with any physical disability but the person will not be able to learn as a normal human being does .
5. Psychosocial disability- mental health consumers and carers use to describe the disability experience of people with impairments and participation restrictions related to mental health conditions.
6. Multiple disorder -means concomitant impairments (such as mental retardation blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

She explained to the participants the cause of disability as locomotor disability may arise from the following conditions:

- Cerebral Palsy
- Polio
- Amputation
- Paralysis
- Congenial Deformities

Then she moved on to speak about the various causes of impairment. The speaker classified the causes into three:

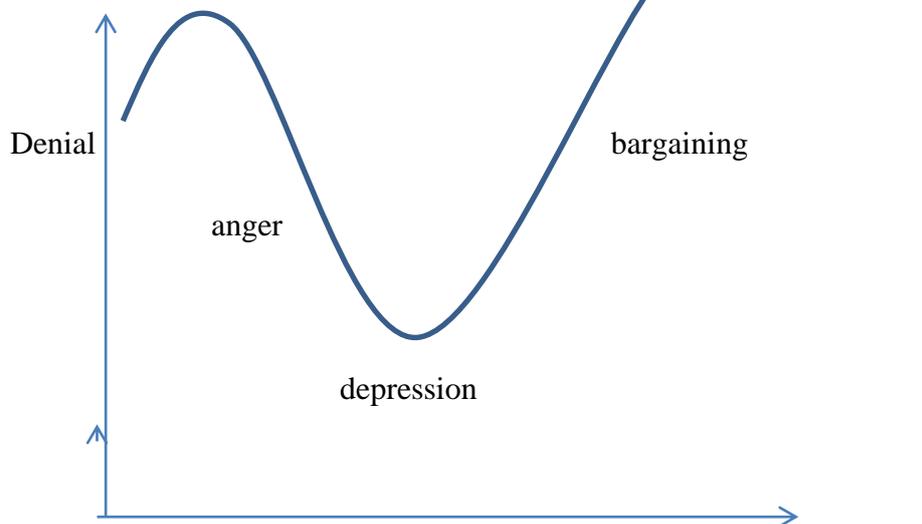
1. Prenatal-It arises when a child is conceived it mainly includes genetic, chromosomal, infections in mother, exposure to toxic substance, congenital defects in brain.
2. Perinatal- This is during child birth like oxygen deprivation during birth, abnormal fetal presentations, difficulties in labour room, injury to brain, low birth weight, etc.
3. Postnatal – This arises during the first few months of birth like infections in brain, iodine deficiency, diseases, accident, malnutrition, nervous damage.

The speaker elaborated on locomotor disability by dividing it into two types:

Common locomotor disability and –

Uncommon locomotor disability-

She then moved on to explain the emotions trauma that a victim will go through after an accident and she used KUBLER-ROSS grievance table for that the victim will go through 5 phases



- **Denial phase:** The victim will fully deny the fact of disability in him.
- **Anger phase:** In this phase the victim would have a feeling of hatred towards his family, himself and the society at large.
- **Depression phase :** This stage can be controlled through medication.
- **Bargaining phase:** In this phase, the victim would be questioning why was he given a destiny like this.

- **Acceptance phase:** This is the last phase here the victim would accept to the fact of his disability.

AID AND APPLIANCE OF LOCOMOTOR DISABILITY

Again the speaker classified the appliances into 3 types:

1. WALKING AIDS: stick, cane, walker, crutches,
2. MOBILITY AIDS :wheel chair and motorised wheel
3. APPLIANCES:
 - I. PROTHESIS(LOWER LIMB)- those appliances used to rectify the disability defects in below knee area.
 - II. PROTHESIS(UPPER LIMB)- those appliances used to rectify disabilities above the knee level.

She then briefly explained the cost of these appliances

BELOW KNEE-(8000-8-10LAKHS)

ABOVE KNEE-(20000-25-30LAKHS)

JAIPUR KNEE manufactured by ALIMCO cost around 8000ruppees

Then she moved on to mention the legislations present in India for disabled persons:

VARIOUS LEGISLATIONS

- Persons with Disability Act, 1985
- Mental Health Act, 1987
- National Trust Act, 1999.

Finally she moved on to explain the redressal issues in dealing with motor vehicles accidents:

The victims will have to face a number of issues while claiming for compensation

- Disability certificate- to claim for compensation for disability the party has to provide for a certificate which proves his disability.
- Cumbersome paper work- to get the certificate it involves a number of procedures as such which is time consuming and energy consuming

- Insurance does not cover medicines , post-surgery expenses and cost of orthosis.

Conclusion

The speaker concluded the session by advising the judges to grant relief and compensation as according to the extent of disability suffered by them and the ended the session by quoting the words of George Bernard Shaw

“I am of the opinion that my life belongs to the whole community and as long as I live, it is my privilege to do for it whatever I can. I want to be thoroughly used up when I die for the harder I work the more I live.”

SESSION-8

TOPIC-UNDERSTANDING DISABILITY-II

**SPEAKER: V.SARATHA DEVI(ADVOCATE HIGH COURT OF MADRAS,
LECTURER AT SCHOOL OF EXCELLENCE, CHENNAI)**

The speaker commenced the session by defining the term disability:

“A permanent physical flaw, weakness or handicap, which prevents one from living a full normal life or from performing any specific job.”

In this session, the speaker dealt with the legal aspects pertaining to disability and the awarding of compensation by citing various case laws.

She relied on the case law **State of Gujarat v. Shantilal**, AIR 1969 SC 634 : 1969 (1) SCC 509 to give a definition for compensation in a wider context than the word damage held that:

“That word 'compensation' means anything given to make things equivalent, a thing given to or to make amends for loss, recompense remuneration or pay.”

Then she explained the object of compensation again through a case law as held in **R. RAJKUMAR V. AJAY KUMAR**(2011 A.C.J 1(SC)):

“The provision of the Motor Vehicles Act, 1988 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 Tribunal shall have to assess the damages objectively".

The speaker relied on a case law to describe the general principle governing assessment of language: *K.Jagannath Rai v. Gangarathna C.Bai*, 2004 ACJ 982 (Karnataka).

“The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured persons such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. This principle is sometimes referred to as restitution in integrum. However, no award of money can possibly compensate a man and renew a shattered human frame”.

She quoted *Narasimha murthy v. Manager, Oriental Insurance Co.Ltd* to explain the principles of awarding compensation as–

- For pain & suffering
- For loss of amenities
- Shortened expectation of life
- Loss of earnings or earning capacity or both
- Medical treatment and other special damages

The best practices that can be followed while awarding compensation as per the speaker can be classified into three:

- **Assessability;** In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money. So difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases.
- **Uniformity;** There should be some measure or uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice.
- **Predictability;** Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to Court, a thing very much to the public good (*Fakirappa v. Yallawwa*, 2004 ACJ 1141).

Miss Saratha devi then cited a case to show how the compensation can be awarded

Full and fair compensation has to be paid for non-pecuniary damages and not as a matter of solace. Victims who are unconscious be awarded for loss of amenities and loss of expectation of life. Victims who are unconscious be also awarded for pain and suffering because the tortfeasor was not to gain an advantage by involving the victim in an accident which made him unconscious. Awards already made for similar injuries may be taken into consideration but it would be necessary to increase the figure keeping in mind the effect of inflation over the period.

Both positive and negative factors may be taken into account – extent to which the good things of life were taken away (loss of amenities) and the positive infliction of unpleasant things (pain and suffering).

In Laxman v. Division manager, oriental insurance company 2012 A.C.J191 it was held that the court should award the compensation for not only for the immediate treatment but for future medical treatment for a particular injury or disability caused by the accident.

She also enlightened the participants about consideration the future prospects that need to be considered while awarding the compensations to victims for which she relied on Satyawati v. Raju, 2004(1) TAC 418(Del):

“With the rise in inflation and cost of living, the Tribunal ought to have taken into consideration the future prospects in the life and career of the injured. With the passage of time, the income which he was getting would have increased because of rise in inflation and cost of living”.

The speaker explained the term total disability by citing few cases:

1. Pratap Narain Deo Singh(1976(1)S.C.C 289)- A Carpenter had suffered amputation of his left arm from the elbow. The Hon'ble Supreme Court held that it was total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident.
2. S. SURESH V. ORIENTAL INSURANCE COMPANY LIMITED AND ANOTHER(2010(1)TNMAC 253(SC))-It is a case where following the ratio laid down in the Four Judge Bench decision of Apex Court in PRATAP NARAIN SINGH DEO ..VS.. SRINIVAS SABATA (1976 (1) S.C.C. 289), it was held that amputation

of right leg below knee rendered injured unfit for work of driver which he was performing at time of accident resulting in total disablement. The loss of earning capacity of the injured was estimated at 100%.

According to the speaker, in certain cases, even if there is no 100% disability but economic and functional disability may be treated as total. She substantiated her view by relied upon

1. R.Venkatesh v. P.Saravanan, 2002 ACJ 1743 (Karnataka), this Court while dealing with a personal injury case where due to certain crushing injuries sustained by the claimant therein, his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100 per cent though only the claimant's left lower limb was amputated. In para 9 of the Judgment, the Court held thus: "As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below knee has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100 per cent."
2. In the said case, when the helper / cleaner in mini bus, earning a sum of Rs.4,000/- per month suffered amputation of left leg in the accident, compensation towards pain and suffering was awarded at Rs.1,50,000/- and towards loss of marital prospects a sum of Rs.1,50,000/- has been awarded. The Award of the Tribunal was enhanced from a sum of Rs.3, 06,000/- to Rs.9,53,600.

She also stated that the tribunals should have a proactive approach while awarding compensation and the compensation thus awarded should be just and it should be disposed off with the required urgency.

She also quoted the calculation formulae mentioned in SARALA VARMA case for manipulating the amount of compensation to be awarded in a particular case by taking into consideration of various factors.

Finally she read out the facts of Dwaraka Prasad Pandey v. Harish Chandra 2009 1 AW C889 and asked the participants whether the compensation awarded is adequate all the participants responded to her question by giving their own view points.

She then concluded her session by giving the synopsis of her lecture and told a small story about Dr A.P.J Abdul Kalam. When Abdul Kalam was interviewed, he was asked which was the most happiest moment in his life. Dr. Kalam said that his team was able to make an appliance for the disabled children which weighed 4kg earlier now its weight has been reduced to 400gms by his team. When he see the smile of the children, that sight is the most happiest moment in his life. Likewise, the speaker advised all the participants to be just and reasonable in fulfilling their duty towards the society.

DAY 3

SESSION 9

SPEAKER: JUSTICE MRIDULA BHATKAR

SUBJECT:LIABILITY OF INSURERS FOR COMPENSATION ON THE BASIS OF NO FAULT LIABILITY UNDER SECTION 163A.

Justice Mridula began her session by greeting all the participants. She spoke about the history of MVA and why it was formulated? According to her the MVA came into existence because of the enormous development in vehicle industry. She said that earlier the offences were considered as tort and later these offences started getting penalised. The entire Act is based on 2 principles:

1. **Resp ipsa loquitur**-the principle that the mere occurrence of some types of accident is sufficient to imply negligence. She explained the principle further through the case Donoghue v. Stevenson
2. **Vicarious Liability**- The master will be liable for the act of his servant. She explained this principle on the basis of the case Ryeland v. Fletcher

Thus the first legislation was passed in 1939. As her topic was related to no fault liability principle she explained chapters 10, 11, 12 of MVA in depth.

The no faulty theory was first introduced in section 92A of the act then later on it was Chapter 140. Liability to pay compensation in certain cases on the principle of no fault. The section reads as follows:

(1)Where death or permanent disablement of any person has resulted from an accident

arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be fixed sum of twenty five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

The chapters 10, 11 and 12 are the most used sessions in lower courts. Then she interacted with the participants about their experience in dealing section 140 and 163A. She also stated that one party cannot approach the court for both remedy under 140 and 163A. She referred to the cases mentioned in the reference material provided:

1. Deepal Girishbhai Soni v. United India Insurance Co. Ltd(2004)5SCC385
2. Oriental insurance Co. Ltd v. Rajni Devi (2008)5SCC 736.

She then explained the manipulation of compensation amount by using schedule 2 of the Act. She also relied on Trilok Chand case, Reshma kumari, Gurumallak case and the decisions to explain it further.

The speaker explained the concept of contributory negligence in case of minor through the case Narayanan Swami where the boys who went to a village as a part of

school trip entered into an open space and they urinated there. That space was owned by ONGC and suddenly there was an explosion causing serious injury to the children. All these children were minor. Court held that they are liable to receive compensation as the defence of contributory negligence will not stand.

The speaker concluded the session by giving a brief explanation about the term notional income and how the apex court has interpreted the same.

SESSION 10

SPEAKER: JUSTICE MRIDULA BHATKAR

SUBJECT: ISSUES AND CHALLENGES FACED BY MOTOR ACCIDENT

CLAIMS TRIBUNALS

In this session Hon'ble justice mentioned and explained about the issues that usually arise before MACT. She advised the participants that more reliance has to be given on the bare acts and not on cases. Bare acts should be considered as their bible and they should go through it again and again to deliver reasonable justice.

She then spoke about section 170 section and it reads as follows:

Impleading insurer in certain cases.

Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) There is collusion between the person making the claim and the person against whom the claim is made, or

(b) The person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are.

The speaker gave a detailed description of the said section. One of the participants asked her if a person died through an accident and the said person used to take classes for no cost to small children, will that be considered as an example of loss of dependence. There was a discussion on the said situation afterwards.

Section 149 deals with the concept-duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. She thoroughly explained the concept Then she moved on to explain the concept of valid license. She also quoted Swaran Singh case.

According to her license can be of two types

1. Effective license
2. Duly License

She also discussed the provision in Section 3 of the act about necessity of license. Section reads as follows: .Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do. (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

For this relied on the cases to substantiate the concepts. Then she winded up the session by reciting a poem based on the real story Jagjit and chitra Singh's son who was crushed to death by a drunken boy.

SESSION 11

SPEAKER : HARISH SHETTY

SUBJECT: MEDICAL AND PSYCHOLOGICAL NEEDS OF VICTIMS OF ROAD ACCIDENTS.

He started of his session by asking the participants that how many of them have met with an accident. The participants who had met with an accident shared their own experience as a victim to the accident.

He then spoke about the treatment that needs to be given to the victim. He divided into 3 sub topics:

1. To treat fractures and injuries
2. To treat fractures of mind
3. Immediate post-accident phase:
 - Safety
 - Assessment
 - Protection from curious visits

Then he spoke on the mistakes that we should not commit to a victim after an accident

- Convergence: we should not go in a large number to meet a victim as this will have adverse effect on him
- Faulty leadership
- RARA lectures
- I told you so
- Astrologers
- Lie, lie, lie
- Sharing of feelings
- Listening
- Intrusive thoughts
- Anxiety
- Insomnia

- Startle

He said that we always have good and bad memories but the human mind will suppress those thoughts which will cause bitterness to the minds. He asked the participants to share the experience related to their good memories.

Policies that can be taken: According to the compensation for victims should include mental health interventions across times. Frequent visits to accident sites will help to heal the bad memories of the accident. Spiritual interventions will also be helpful for the same and the family should be educated about the victim to be treated.

The accident can cause hypertension, hyper vigilance and depression to the victim which needs to be understood by the people who have a contact with him.

He also pointed out that the compensation amount should not be based on gender bias. Whether is it a man or a woman both need to give the compensation in the same manner.

Before the session was concluded, the speaker gave some suggestions from his point of view to the judges what they need to consider before awarding compensation:

- ❖ To go through the psychiatric report also before awarding the compensation.
- ❖ One should keep in mind the state of mental health also before giving down the compensation.
- ❖ Constantly update oneself on PTSD(Post Traumatic Stress Disorder) to understand the case better.

SESSION 12

SPEAKER: S. SRINIVASA RAGHAVAN

SUBJECT: ASSESSING NON-PECUNIARY DAMAGES AND LOSS IN MACT CASES

The speaker started with defining the term non-pecuniary. According to him it serve as a palliative or provide the plaintiff with the means to purchase alternative form of happiness or help to meet hidden expenses caused by injury. While the practice of the courts is not to subdivide non-pecuniary damages under specific heads, nevertheless, proper consideration

cannot be given to the plaintiffs claim without taking into account various types of loss he suffered.

He relied on the case *Hardev Kaur v. RSRTC*: “Determination of compensation must be just and reasonable. When compensation is awarded by the courts and the Tribunals, even the tort-feasor feels that he is atoned for the sin committed in causing the accident, robbing the precious life of the human being can injure an innocent person for no fault on his part”.

Then he moved on to explain the provision in Motor Vehicle Act. As provisioned by Sec. 168 of the Motor Vehicles Act, the basic principles of compensation to be awarded in personal injury cases may be categorized as follows:-

1. Mental shock, pain and suffering.
2. Loss of amenities of life.
3. Loss of earning capacity.
4. Shortened life expectancy
5. Loss of prospects of marriage, avocation, education & social opportunities.
6. Loss of beauty due to disfigurement.
7. Future medical expenses.
8. Loss of property due to the accident

According to speaker non-pecuniary damages include -

- a) Damages for mental and physical shock, pain and suffering who already suffered or likely to be suffered in future.
- b) Damages to compensate for loss of amenities of life.
- c) Damages for loss of expectation of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

Non-pecuniary damages are those which are incapable of being assessed by arithmetical calculation.

In order to appreciate the concepts, pecuniary damages may include expenses incurred by the claimant as follows:-

1. Medical assistance.
2. Loss of earning of profit.
3. Other material loss.

Expenses relating to treatment includes etc.

- b) Loss of earning .
- c) Loss of earning during period of convalescence.
- d) Loss of future earnings on account of disability.
- e) Future medical expenses

He also relied on cases for substantiating his points:

1. *Reshmakumari v. Madan Mohan. 2013 (9) SCC 15*
2. *Rajesh v. Raj Bir Singh. 2013 (9) SCC page 54*
3. *Santhosh Devi v. National 2012 (3) ACJ 1428 SC*
4. *Sarla Varma v. Delhi Transport Corporation. 2009 (6) SCC 12*
5. *Govind Yadav v. New India 2012 (3) MLJ 719 SC*

He explained each decision and the relevancy of each was discussed with participants finally he said that Supreme Court has given broad classification such as:

- a) Damages for pain, suffering and trauma as a consequence of the injuries.
- b) Loss of amenities (and/or loss of prospects of marriage)
- c) Loss of expectation of life (shortening of normal longevity)

He concluded his session by saying that the Hon'ble Supreme Court has held that the assessment of non-pecuniary damages as above said involves determination of lump sum amount with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant.

SESSION 13

SPEAKER: SARATHA DEVI

SUBJECT: ENSURING GENDER JUSTICE IN AWARDING COMPENSATION IN MACT CASES

The speaker began her session by quoting the words of Former UN general secretary KOFI ANAN:

“Gender equality is more than a goal in itself. It is a pre-condition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”

The speaker went on to explain gender justice and the status of Indian women as Gender Justice refers to harmonizing of rights and needs of women into mainstream society. Justice in this sense means more balanced behaviour, an end to violence and equal distribution of social necessities and Indian women have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.

The fundamental rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual, moral and spiritual status. These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. The various provisions are:

1. Article 14- Equality before law – *“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”*. The Courts or any Law enforcement agency should not discriminate between a man and a woman. The right to equality is the foundation on which other laws are formulated and can be implemented. Without the right to equality, the purpose of gender justice cannot be achieved.
2. Article 15- (1) *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*
(2) *No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-*

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

3. Article 21: *“No person shall be deprived of his life or personal liberty except according to procedure established by law”*. The procedure must be fair and reasonable as per the decision of the Supreme Court in Maneka Gandhi’s case.
4. Article 51A(e)- *To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.*

She mentioned about the compensation to be awarded in case of the victim is a house wife:

- So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12, 000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low.
- It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives.
- But even in the absence of such data and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum.

- This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs.36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000/- instead of Rs.25,000/- given under the Report.
- So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000/- per annum and multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum.

She then quoted a case *Arun Kumar Aggarwal and Anr. v. National Insurance Co. Ltd.*

- “The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death.
- It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.
- While estimating the `services' of the housewife, a narrow meaning should not be given to the meaning of the word `services' but it should be construed broadly and one has to take into account the loss of `personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services.”

Again she quoted another Indian case to explain the topic more deeply and she used *Amar Singh Thukral v. Sandeep Chhatwal* for the same :

- “The yardstick of minimum rates of wages for the purpose of award of compensation in the case of death of a housewife and then proceeded to observe ‘since there is no scientific method of assessing the contribution of a housewife to her household, in cases such as the present, resort should be had to the wages of a skilled worker as per the minimum rates of wages in Delhi.
- Although, this may sound uncharitable, if not demeaning to a housewife, there is hardly any option available in the absence of statutory guidelines’ ...
- In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period.
- The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services.
- It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife.
- In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation.
- Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments in General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others, U.P. S.R.T.C. v. Trilok Chandra , Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another and also take guidance from the judgment in Lata Wadhwa's case.
- The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker”. The other case she relied on is that *Panchasaram Singh&Ors v.Tmt. Girija& anr*

- M.V. Act 1988, S.166 – Husband and other legal heirs claimed compensation for the death of the lady belonging to ‘Narikorava community’ doing handicraft work in house
- Insurance company opposed the claim as legal heirs not depended on her income.
- Trial court awarded Rs.1,86,000/- on appeal High court held non-payment of any claim amount may be correct for cases of maintenance, when the persons claiming maintenance are capable of maintaining themselves, but not in the case of compensation for the parties who have lost love, affection, services etc.,
- Compensation enhanced from Rs.1,86,000/- to Rs.3,75,000/- CMA allowed in part

Another issue she dealt is whether a married daughter can claim the compensation of her father’s death:

Sevakal and another v. M.Valarmathi and three others. Even married daughters of a road accident victim can claim monetary compensation for his/her death under the Motor Vehicles Act, 1988, since dependency on the deceased is not a sine qua non for making such claims, Madras High Court Bench has ruled in the decision.

Even a married daughter who is not dependent can claim compensation.

The speaker also pointed out the legal representatives can claim compensation for which she even defined the term legal representative as in Section 2(11) of the Code of Civil Procedure defined the term ‘legal representative’ as “a person who, in law, represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased”.

The speaker then explained the concept of loss of estate as:

- “Even if a person is not a dependant, if he is entitled to inherit the property of the deceased, he can represent the estate of the deceased, and thus he becomes the legal representative,” the apex court added.
- Yet another ruling of the Supreme Court categorically held that “a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent or a child.”

- “Therefore, the married daughters whether dependent or not, are entitled to claim compensation on account of the death of their father as they would suffer on account of loss to estate,” the Court concluded.

She concluded saying that civilization is measured as to how Judiciary treats those who are at the –

- Dawn of Life (Children)
- Twilight of life (Elderly)
- Shadow of Life (Sick & Infirm)

The session witnessed the participants interacting with the speaker about the various issues that she has discussed awarding compensation to the house wife one among the most which received various opinions.

DAY 4

SESSION 14

SPEAKER:LEONARD PONRAJ

SUBJECT:ASSESSMENT OF DISABILITY

PANELIST:JUSTICE KJ SENGUPTA

Justice welcomed the gathering by saying- Know you brothers and know your sisters all over India. Justice introduced Dr. Leonard Ponraj. Justice then explained the difference of impact on losing legs on a rickshaw puller and a judge. In the first case the disability will affect the working capacity of the person while in latter it will not affect the working capacity and his livelihood is not affected.

The speaker started by saying how a disability arises using the following diagram:

Physical impairment



Functional impairment



Disability

Physical impairment: It is a permanent psychological anatomical loss and/or abnormality.

Functional impairment: It is a condition which can be partial/total inability to perform those activities necessary for motor, sensory, or mental functions within the range and manner of which a human being is normally capable. It can be short term, long term, and reversible, permanent, progressive and regressive.

Disability: Any restriction or lack of ability to perform an activity within the range considered normal for a human being.

The speaker defined the term disability under **medico legal category:**

In the medical point of view he defined disability as it is physical impairment and inability to perform physical functions.

In the legal point of view he defined disability as: permanent injury to body for which the person should or should not be compensated.

According to the speaker functional assessment can be classified into 2:

1. arm component-90%
2. hand component-90%

The guidelines for the assessment of the functional disability are issued by the ministry of social justice and empowerment.

He then went on to speak on the evaluation of upper limb disability:

1. Depends on the measure of functional impairment
2. This assessment should be made after 12-18months
3. Arm component assess ROM, muscle strength and co-ordinate activities
4. The upper limb.
5. Measurement of loss of function of hand component assess pretension, sensation and strength.
6. The impairment of the entire extremity depends on the combination of the functional impairments of both components.

The then explained the combination formula

$$a+b((90-a)/90)$$

where a-always the higher value and 90 is a constant

He then spoke about the disability assessment in upper limb. He used various diagrams to explain it further.

ARM COMPONENT-90%

Shoulder joint-30%

Elbow joint-30%

Wrist joint 30%

HAND COMPONENT-90%

Loss of prehension-30%

Loss of sensation-30%

Loss of strength-30%

Then he explained the principle to be followed for the evaluation of range of motion

ROM	NORMAL	ACTIVE	LOSS
FORWARD FELXION	180°	90°	50%
ABDUCTION	180°	90°	50%

ROTATION	90°	45°	50%

Hence the mean loss of ROM of shoulder will be $(50+50+50)/3=50\%$

Shoulder movement constitute 30% of the motion of the arm component therefore the loss of the motion for arm component will be $50*0.30=15\%$.

The speaker also elaborated on the computation of muscle strength. The mean % of loss of muscle strength around a joint is multiplied by 0.03.

Then he again went to the calculation of total arm component

a- Loss of ROM

b- Loss of muscle strength

c- Loss of coordinated movement

$$a+b(90-a)/90=d$$

To add of loss of coordination (d&c) $d+c(90-d)$

Thus the speaker enlightened the participants about the calculations pertaining to injury in cases of Motor Vehicle Act.

SESSION15

SPEAKER: JUSTICE KJ SENGUPTA

SUBJECT: EVIDENTIARY ISSUES IN MACT CASES

The issue mainly dealt by Hon'ble Justice is about importance the of evidence in Motor vehicles accident cases and how far is evidence necessary in Motor vehicles accident cases was the moot question Most of the participants said that evidence is not necessary in MACT cases. As there is a legal provision strictly saying that rule of evidence is not applicable.

Section 1 of Evidence Act reads as follows: This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of India [Except the State of Jammu and Kashmir] and applies to all judicial proceedings in or before any Court, including Courts-martial, [other than Courts-martial convened under the Army Act., (44 & 45 Vict., c.58) the Naval Discipline Act (29 & 30 Vict., c 109) or the Indian Navy (Discipline) Act. 1934] (34 of 1934) or the Air Force Act Geo. 5, c. 51) but not to affidavits presented to any Court or Officer, not to proceedings before an arbitrator.

And it shall come into force on the first day of September, 1872.

The function of the court is to decide the case which comes before it. It is a proceeding of civil nature but for the act the appeal is given to a civil court only. He also explained to the participants about SECTION 141 OF CPC [*The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.*]

Explanation: In this section, the expression “proceedings” includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution. and along with the concept of beyond reasonable doubt where preponderance of probability stands as an exception].

Likewise, in MACT cases also, the concept of evidence is there. During the period of trial there must be an element of rash and negligent act from the part of the accused this needs to be proved by using relevant evidences.

Then he went to explain the concept of contributory negligence.

It is the duty of the respondent to prove there was an element of contributory negligence.

Thus the burden of proof is on the respondent.

He discussed about the concept of vicarious liability. Who would be liable in a master-servant relation and how it is affected. He spoke on the different aspects of the same. Then there was discussion with regard to the definition of motor vehicle, as per the act.

He concluded by quoting few cases on this regard.

THE CONFERENCE CONCLUDED BY FEEDBACK AND SUGGESTIONS FROM THE PARTICIPANTS.

