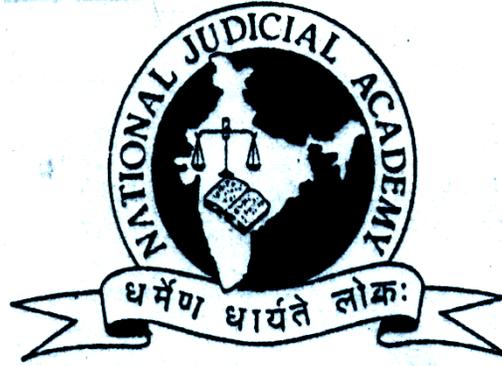


NATIONAL JUDICIAL ACADEMY



NATIONAL CONFERENCE OF JUDGES OF THE DISTRICT JUDICIARY ON "MACT Cases" (P-922)

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PROGRAMME REPORT

By

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BACKGROUND

The National Judicial Academy organized the National Conference of Judges of the District Judiciary on MACT Cases with the objective of enhancing the capacity of judges adjudicating motor accident claims. In the course of the conference the discussions would cover the major challenges faced by judges dealing with motor accident claims and the issues that are responsible for making decision making a complex and challenging task. The conference would provide the participants with different perspectives to judge issues before them so that they can apply the laws effectively to provide timely justice.

Day I

Introduction & Thematic Context

The programme commenced with an Introductory Address by the Programme Co-ordinator. The Programme Co-ordinator welcomed the participants and the resource persons to the Conference and set out the thematic context of the conference. The programme co-ordinator drew the attention of the participants to the structure of the conference and the themes that would be discussed in the course of the conference. The Programme Co-ordinator encouraged the participants to make use of this opportunity to share their experiences and to raise issues that are relevant to their work in dealing with motor accident cases.

Session I

Theme – Motor Accidents Claims Tribunal: Aims, Achievements and Challenges (Open Discussion)

Speakers – Dr. S.B.N. Prakash, Mr. N. Vijaya Raghavan

Dr. Prakash dwelt on the constitution and the vision of social justice. He stressed that social justice was the goal of every state functionary and especially the MACT which deal with cases relating to loss of lives and injuries to person must remind itself of the con

stitutional responsibility to ensure social justice to all people. The determination of compensation by MACTs must be guided by these principles and judges must be guided by their social obligation under the Constitution of India. Dr. Prakash shared about cases he has dealt with wherein the victim is in such a bad condition that he can't work and being the only earning member, the whole family suffers the consequences. He added that social justice is a very important aspect of justice. It is the constitutional dharma which is derived from Preamble. The judges must be conscious of this and must ensure that this vision is fulfilled in their decisions otherwise the judicial system will fail in discharging its duty to the people.

Dr. Prakash pointed out the difficulties faced by MACTs in dealing with motor accident claims. One issue is the requirement of assistance from medical experts in determination of disability. Often the certificates are forged or do not reflect the real extent of disability. Also the court finds it difficult to get the medical expert to take time out to come to give evidence. In this respect Dr. Prakash suggested that Medical Boards should be created to determine disability. He suggested that a commission can be appointed wherein members of which can go and record the evidence of the victim and verify him. The positive proactive action is required for an efficient justice system. He added that the question arises when we try to be proactive but we will be prejudiced therefore the main thing to be proactive on is the constitutional dharma which is social justice. Judges have to think and lean towards the weaker section, wherein the victims are the one who have lost limbs or have died or are not in a condition to work. Therefore, the constitutional dharma is the important aspect which we should focus on.

Mr. N. Vijaya Raghavan gave a brief introduction on the history of Motor Vehicles Act in India and added that the history of MV accidents claim started in England. He also discussed Fatal Accidents Act commonly known as Lord Campbell's Act which had only five sections. Mr. Vijayaraghavan dwelt on the provisions of the Fatal Accidents Act and opined that the said Act was not needed in India. Mr. Vijayaraghavan also stressed on the responsibility of judges to render justice according to the law without any bias.

He concluded the session by adding that court should think logical and render justice without any bias.

SESSION II

Theme – Investigation Norms in MACT Cases

Speakers - Mr. N. Vijaya Raghavan, Mr. UM Ravichandran

Mr. N. Vijaya Raghavan discussed the role of the court in investigation of motor accident claims cases. He stressed on the role of the court to find the truth and opined that judges should not allow witnesses to lie in a court rooms. Strict action must be taken against such persons. Mr. Vijayaraghavan dwelt on the investigation of negligence in MACT cases. He also discussed the provisions of Section 163 A and 166 of the MV Act under which he also discussed Sinitha's case law in detail. He added that MV Act is a social welfare legislation. Therefore, the intention of the legislation is to promote social justice for the welfare of the society and the investigation must be carried out with this intention in mind.

Mr. UM Ravichandran talked on various provisions related to investigation in MACT cases. He discussed various provisions of MV Act which include Section 140, 163 A, 166 in detail. He also discussed section 157, 154 of the Act with respect to the investigative norms in MACT cases. He also added that at times police work according to its whims and fancies. At times police does not report or register the case. Therefore, there should be use of technologies to make sure that the complaint has been lodged on time. He also emphasized on methods which court should adopt to verify that whether the injury is due to the accident or is consequence of some other incident. He also shared various fraud cases also wherein damages are claimed fraudulently. Therefore, court should adopt effective measures to investigate into the matter, to reach to the crux of the issue.

SESSION III

Theme – Role of Third Party Insurance in MACT Cases

Speaker- Mr. RK Nair

Panelists- Dr. SBN Prakash, Mr. N. Vijayaraghavan, Mr. UM Ravichandran

Mr. Nair gave a brief introduction on historical perspective of Motor Insurance. He added that in India, the MV Act was passed in 1939. But the provisions of compulsory third party insurance were introduced in 1946. He added that third party insurance for motor vehicles is compulsory under Section 146 of the Motor Vehicles Act 1988. Till 2006 the premium for the third party motor insurance was administered by the Tariff Advisory Committee by way of Indian Motor Tariffs. In 2007, the tariffs were withdrawn and the IRDA under the powers vested with it by Section 14 (2) (i) of the IRDA Act regulated the premium by fixing the maximum premium that can be charged for motor third party insurance. He also discussed motor insurance pool, participation in motor third party insurance pool. He added that owing to the burgeoning liability of the pool, the authority decided to dismantle it and reconstitute a 'Declined Risk Pool' which will cater to only those risks which are declined by the insurers.

He also discussed the scheme of liability under the MV Act. Under this head, the insurers have only those defences which are prescribed under the Act. They are very limited. The new Road Safety Bill also does not help the insurers as it is modelled along the lines of the MV Act 1988 in this regard. However, the new Road Safety Bill has prescribed maximum limited liability of Rs. 15 lakh for the compensation on regular basis and maximum Rs. 20 lakh on structured compensation basis. While this could be helpful to the insurers in high end cases the judiciary may also take this limit as the liability per se and the award could be the maximum limit. Thus the ceiling could become the maximum. He concluded the session by highlighting on issues which should be taken into consideration. These issues include time limit for lodging a complaint, since there is no time limit,

at times claimants against companies file a suit after years which makes huge difference in the percentage of amount. Another issue is regarding jurisdiction, which can give rise to fraudulent cases and the last issue is regarding the limit on liability. Since there is no limit in liability, there is difficulty in pricing.

SESSION IV

Theme – Assessment of Disability: Judicial Understanding of Medical Evidence

Speakers- Dr. PB Gujaral, Dr. Leonard Ponraj

Panelists- Dr. SBN Prakash, Mr. N. Vijayaraghavan, Mr. UM Ravichandran

Dr. Gujaral discussed the concept of disability. He referred disability as restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being. He discussed types of disability such as partial and total disability. He mentioned cases of Kharak Singh vs The State of UP under Article 21 of the Indian Constitution. He also discussed right to work, education, and public assistance under Article 41 of the Indian Constitution. He discussed the disability assessment under MACT and PWD Act. He discussed the role of medical evidence in MACT cases in relation to calculation of pecuniary damages. He discussed various case laws which include Vishnu alias Undrya vs State of Maharashtra, Mayur Panabhai Shah vs State of Gujarat. He recommended few areas where attention has been required. Such areas include life saving treatment, time factor in relation to disability assessment, lack of awareness among doctors. He concluded the presentation by adding that man's life should be given priority over anything else also there should be awareness among the doctors through training.

Dr. Leonard Ponraj discussed on the assessment of the disability. He suggested there has been new rules and regulations on disability certificates, he recommended all the participants to adopt that. He added that most of the times the disability is caused due to accidents only. He added that at times people just pretend that they are suffering from disability but they are not. At times they just fake it in front of the hospital authorities to get

t certificate of disability. For example in a case where the person was asked whether he can smell or not, in such tests one can easily fake the symptoms saying that he doesn't smell anything. He also suggested that judges can always refer to lok adalats or any higher court to know on what basis the compensation in cases of disability should be granted. Dr. Ponraj also discussed the method of calculation of disability and the ways to assess the disability suffered in a motor accidents.

Mr. UM Ravichandran asked the speakers to explain the assessment of functional disability. To which Dr. PB Gujaral replied that for functional disability there has to be a certificate of at least thirty percentage disability issued by the doctor.

One of the participants also raised a question on how to determine whether the victim was already suffering from the disability before the accident. To which Dr. PB Gujaral replied that in such cases it is verified through the wound report if that person had any disability before the accident. He concluded the session by adding that the assessment of disability is very sensitive area and thus compensation in such cases should be awarded fairly.

DAY II

SESSION V

Theme - Procedural Norms Evolved By Courts for Inquiry in MACT Cases

Speakers- Dr. S.B.N. Prakash, Mr. UM Ravichandran

Panelists – Justice Indira Banerjee, Mr. S. Srinivas Raghavan, Ms. V. Saratha Devi

Dr. S.B.N. Prakash initiated a discussion on procedural norms evolved by the courts for inquiry in MACT cases. He said that states should follow a proper format to expedite MACT cases. He added that one should go for summary procedure. He also added judg

es can hold inquiries on medical expenses also.

One of the participants asked on how summary procedure is done. To which, Dr. Prakash replied that while framing issue under CPC, while framing the issues the local police inspectors are required to send the report once the issues are framed. He added that earlier indiscriminate time used to be granted but now time is definite. We should keep in mind that we are keeping the victim into jeopardy. He added that opportunity should be given to defendants also. He said that in such cases the maxim "Res Ipsa Loquitur" should be followed, which means a rule of evidence whereby the negligence of an alleged wrongdoer can be inferred from the fact that the accident happened.

Justice Indira Banerjee added that in such cases the accident report can be taken into account. Also, the tribunals were formed because otherwise it would have been under the civil courts wherein all the civil rules would have applied. Justice Banerjee also shared Supreme Court's words on MACT cases and added that tribunals play proactive role in deciding such cases.

Dr. Prakash added that relating to summary procedure one should check what is needed and what is not and accordingly without wasting time should carry out the proceedings to save the time. He said that parrot writing should be avoided.

Mr. UM Ravichandran through power point presentations talked on various aspects of procedural norms. He referred to the Motor Vehicles Act as a social legislation. He added that it is very important in such cases the procedure is swift. Therefore, for this the Supreme Court and various High Courts have set up procedural norms that the tribunals should follow. He gave a brief introduction on MV Act. He added that procedural norms in MACT cases can be of two types that is either prescribed by the Act or evolved by courts. He discussed Section 158 (6), Section 166 (4) of the MV Act in detail. He also discussed norms mentioned under Central Motor Vehicle Rules, 1989 and Form 54. He talked on Section 134 of the MV Act regarding the duty of the driver in case of accident and injury to a person. He spoke on Section 169 regarding the procedure and powers of the cla

ims tribunal. Mr. Ravichandran also discussed the principle of natural justice as a procedural tool. He discussed various case laws on MACT cases which include Sarla Verma vs Delhi Transport, Nagappa vs Gurudayal Singh, Reshma Kumari and others vs Madan Mohan and others, Amrit Basu vs National Insurance Co. He concluded the session by adding that only if police play active role in fairly investigating the scenario and update the judges on same then in that case it will be a great help in deciding the cases as soon as possible.

SESSION VI

Theme – Evidentiary Issues in MACT Cases

Speaker – Mr. N.Vijayaraghavan

Panel – Justice Indira Banerjee, Dr. S.B.N. Prakash, Mr. S. Srinivas Raghavan, Mr. U M Ravichandran

Mr. N. Vijaya Raghavan spoke on the evidentiary issues in MACT cases. He discussed the concept of summary procedure and added that summary trial takes place when a plaintiff files the suit, makes the statement and then the defendant pleads. He mentioned that these tribunals have trapping of the civil courts. He discussed Section 149 (1) of the MV Act in detail. He said that insurance companies are not the necessary parties in the proceedings. But as soon as the insurance companies comes into picture the mind-set of the judge changes. He shared that insurance companies pay nearly sixty six lakhs as an interest alone on daily basis. They make huge loss. Therefore, insurance companies should be made liable but beyond a reasonable point they should not be held liable. He added that all subordinated cases mostly accident cases are gone for toss. It is a mind-set of the judges to make insurance companies held liable. Law should not go for toss. Justice should be paramount. He quoted K T Thomas's word and added that it has become procedure and the substance is lost. He added that this way we are holding the rights of the

insurance companies. Supreme Court said that when there is a right there is a remedy. Therefore, when insurance companies have right then they should have option of remedy also. He suggested that judges should only recognize the liabilities when it is required. He said that courts should be reasonable and very specific to law in deciding whether they are liable or not.

SESSION VII

Theme – Adjudicating Third Party Claims in MACT Cases

Speakers – Mr. S. Srinivasa Raghavan, Ms. V. Saratha Devi

Panel – Justice Indira Banerjee, Dr. S.B.N. Prakash

Mr. S. Srinivasa Raghavan through presentation discussed on adjudicating third party claims in MACT cases. He discussed Section 163-A of MV Act in detail, which deals with the special provisions as to payment of compensation on structured formula basis. Under this head he discussed various case laws which include Deepal Girishbhai Son and others vs United India Insurance Co. Ltd. He also discussed in depth the application of the Act. He shared his views on claim by the owner of the vehicle against the insurer. He discussed various case laws which include Oriental Insurance Co. Vs Rajini Devi, New India Assurance Co. v. Sadanand Mukhi, United India Insurance Co. v. Vijayaraja & Ors., S.Danapal v. A.Jerome & others, Dhanraj v. New India Assurance, Oriental Insurance Co. v. Juma Saha & others, United India Insurance Co. Vs Ravi and others. He discussed on claim by borrower of vehicles and under this topic he discussed Ningamma's case in detail. He also mentioned concept of indemnification with the help of Oriental Insurance Co. vs Sunitha Rathi case. He also discussed on financial cap under the Second Schedule of the MV Act with respect to Puttamma's case in detail.

He concluded the presentation by adding that it is very necessary to make changes and

interpret the law in the right sense. Also, the financial cap should be enhanced to a higher scale commensurable to the present day living wages.

Ms. V. Saratha Devi through presentation continued the discussion on adjudicating third party claims in MACT cases. She explained Section 146 (1) of MV Act in detail. Under this heading she discussed the nature and extent of insurer's liability. Also, liability in respect of damage to property under Section 147 (2) of the MV Act. She also mentioned transfer of the ownership of the vehicle under Section 157 (1) of the MV Act. Section 149 was dealt in detail during the session. Also, legal defence available to the Insurance companies towards third party under Section 149 (2) was part of the discussion. She also explained the various instances where parties driving license is at fault. Under this heading she mentioned the case laws of Sohan Lal Pasi, and Swaran Singh. She discussed the concept of gratuitous passenger and salient features of third party insurance. She concluded the session by discussing on the concept of pay and recover wherein Supreme Court has extraordinary jurisdiction. She added that amendments can be made by the legislature regarding the liability of the insurance company to pay to the third party and then recover it from the owner making it simple for the claims tribunal and High Courts to protect the interest of the third parties.

SESSION VIII

Theme – Jurisprudential Trends in Determination of Compensation

Speakers – Justice Indira Banerjee, Ms. V. Saratha Devi

Panel – Dr. S.B.N. Prakash, Mr. S. Srinivas Raghavan

Justice Indira Banerjee initiated a discussion on the quality and reasonability of a decision. She said that the decision should be just fair then only it will be considered as justice. Also, decision should be rendered properly. She added that a decision can only be just f

air when it is supported by reasons, because judges speak through their judgments and decisions. The reasons might not be lengthy but a critic relating to the parties is required in a decision.

She also discussed the structured formula for compensation. She discussed on how one can access compensation for death. To which she added that compensation can only be calculated on the basis of pecuniary loss, otherwise it is not possible to calculate the loss. There are lots of possibilities wherein it can be assumed that the deceased if not had been met with an accident could have done lot of things in life. Therefore, it is hard to decide the compensation amount. Therefore, the compensation should be based on estimation. There should also be an establishment of standardization of estimation. She shared that in many cases where a person suffers an injury is awarded thousand rupees on the other hand in the same scenario the other court awards a lakh. Therefore, there should be standardization adopted in deciding compensation. She also discussed that in case of death, one can estimate the compensation on the basis of gross part of the income, income tax returns, money spent on the family etc.

One of the participants asked that in cases where there are no dependants then in that case who will be the claimant. To which, Justice Indira Banerjee replied that in such cases the claimant will be the legal heir.

She also dealt with the concept of realistic estimation. She added that in cases of functional disability courts generally tend to award twenty five percent to the victim. But, Supreme Court in the case of Rekha Jain wherein the face an actor was affected, the court ruled out that in such cases of functional disability the amount of at least fifty percent should be awarded.

She added that tribunals play proactive role in rendering justice in such cases. She also shared that at times doctors fake medical certificates. In such cases court should take action and a medical board should be constituted to keep check on such activities. To which, participants of Kerala and Calcutta replied that such steps are already implemented in

their states.

Ms. V. Saratha Devi said that human rights are guaranteed to everyone. Hence, protection of the rights should reflect on the quantum of the compensation. Social justice should be promoted. But the compensation has to be justified. It should not be given more than what is claimed. She concluded the session by adding that compensation should be awarded according to the situation which changes from time to time.

DAY III

SESSION IX

Theme – Constructive Solutions and Methods to Expedite MACT Cases

Speakers – Dr. Arun Mohan, Mr. S. Srinivasa Raghavan

Panel – Justice Indira Banerjee

Dr. Arun Mohan discussed the traditional methods of dealing with cases that are continuing from time immemorial and is passed down from generation to generation. He discussed the challenges and problems posed by the lengthy and time consuming procedures adopted by courts and suggested ways and means within the existing law to expedite cases and to make the justice delivery system more vibrant.

SESSION X

Theme – Mediation as a Tool for Settlement of Claims in MACT Cases

Speaker- Dr. Arun Mohan

Panel- Justice Indira Banerjee, Mr. S. Srinivasa Raghavan

Dr. Arun Mohan discussed on how mediation can act as a tool for settlement of claims i

n MACT cases. He referred to page number 370 of the book on "Road Accidents (Justice, Courts and Delays)" which was distributed to all the participants for the session. He said that mediation should be taken seriously. It should not be practised as intimidation. At times during mediation parties tend to intimidate each other according to their dominance and thus not all the evidence comes out during the proceedings. Therefore, if seventy percent of the documents are collected by the judge before referring the case for mediation the mediation proceedings can be practiced fairly and efficiently. He suggested that the mediation in MACT cases should be after collecting all the documents and should be very specific to evidence unlike family disputes. He referred to a chart on page number 370 of the book. He also suggested to National Judicial Academy to generate ideas and thoughts to make mediation more efficient. He said that mediation clause should be made mandatory in all the cases. He also added that mediation is an international concept though one is not bound to follow it but to generate an effective system we can develop more efficient concept on mediation model. He added that mediation's role is advisory. He said that a specialized mediation model is needed. He suggested making the Indian model of mediation more efficient.

He asked all the participants whether they try to get update on the cases which are referred back to mediations. To which, many participants replied that they do not follow the case, usually they lose track of such cases. Dr. Arun Mohan replied that judges should keep a track of such cases to make sure whether justice has been rendered or not. Dr. Arun Mohan suggested that model of both mediation and of lok adalat mixed is needed to render justice efficiently and fairly.

Participant from Punjab shared that judges act as vehicles in a justice delivery system whereas advocates act as wheels, therefore, for a fair delivery of justice both judges and advocates must act efficiently and fairly.

One of the participants also added that in most of the instances the accidents are occurred due to the bad maintenance of the roads. Therefore, even when one is driving safely it

is hard to avoid the accident. To which Dr. Arun Mohan referred to page number 112 and 117 regarding occurrence of the accidents and how safest driving also results into an accident. He added that it is a different issue and that law doesn't differentiate on such issues.

He also referred to page number 142 of the book to explain that how behaviour type of a person is correlated to the accidents occurred. He added that in lot instances people die because of lack of medical attention on time.

Participant from Kerala shared that people at times, instead of helping the injured person, takes selfies, steal valuable items like mobiles and ran off.

Dr. Arun Mohan also suggested that judges should send documents to RTO to verify they are valid or not for example to verify driving license. To which, one of the participants shared that judges are already burdened with other works and sending documents for verification will not only increase the burden but also take lot of time. Dr. Arun Mohan replied by stating that judiciary is burdened at present because such actions were not taken place in past. He continued that in cases of serious disputes, doctors issue fake certificates to show injury. In such cases those certificates should be verified by the medical councils and in cases where the certificates are faked the court should take actions against the doctors. If such steps are taken, then examples will be set in a society no doctor will ever try to fake the certificates.

One of the participants shared that according to the surveys, every three minutes there is an accident which takes place in India. Therefore, forums should be established to discuss the reasons and factors on why so many accidents are taking place in the nation. To which, Dr. Arun Mohan replied that this conference is organised to do the same in the field of law, to modify the legal aspects of the issue as no such action was taken in past.

Justice Indira Banerjee raised the question that in determination of compensation whether it is the age of the deceased or the age of the claimant which has to be considered in d

eciding MACT cases. To which, Dr. Arun Mohan referred to Supreme Court's statement and said that it is the age of the deceased which has to be considered in deciding the case.

Dr. Arun Mohan recommended that there should be a central body to keep an eye on factors relating to MACT cases in a country. Also, till now there has been no proper research journal available on procedure of trial of MACT cases. Therefore, research work in such area should be emphasized to sensitize the issue. And, judges should also play active role and appeal to academies like NJA to sensitize the issue.

Justice Indira Banerjee said that in any death case the compensation should be based on estimation. It is very uncertain to decide that whether that person had have a job if he would have survived or how much he would have earned, or would he had performed well or bad in doing his job. It becomes hard to decide where an earning member of a family has died or where three years old baby died. Therefore, courts should take estimation into account in deciding the cases.

The conference concluded with the concluding remarks by the Programme Co-ordinator.
