I. Collateral Source

A. Can plaintiff submit to a jury the total amount of his/her medical expenses, even if a portion of the expenses were reimbursed or paid for by his/her insurance carrier?

Yes. "The 'collateral source rule,' in general, provides that benefits or payments received on behalf of a plaintiff, from an independent source, will not diminish recovery from the wrongdoer" Bynum v. Magno 106 Haw. 81, 86; 101 P.3d 1149, 1154 (Haw. 2004).

B. Is the fact that all or a portion of the plaintiff’s medical expenses were reimbursed or paid for by his/her insurance carrier admissible at trial or does the judge reduce the verdict in a post trial hearing?

No. "[A]lthough double compensation may result to the plaintiff, such a benefit should redound to the injury party rather than 'become a windfall' to the party causing injury." Bynum v. Magno 106 Haw. 81, 86; 101 P.3d 1149, 1154 (Haw. 2004).

C. Can defendants reduce the amount plaintiff claims as medical expenses by the amount that was actually paid by an insurer? (i.e. where plaintiff’s medical expenses were $50,000 but the insurer only paid $25,000 and the medical provider accepted the reduced payment as payment in full).

No. "The collateral source rule prohibits reducing a plaintiff's award of damages to reflect the discounted amount paid by Medicare/Medicaid." Bynum v. Magno 106 Haw. 81, 89 ;101 P.3d 1149, 1157 (Haw. 2004). The same would apply to private insurance and even gratuitous services provided by a health care providers. Bynum 106 Haw. 81, 87-95 ;101 P.3d 1149, 11555-1163.

II. Accident and Incident Reports

Can accident/incident reports be protected as privileged attorney work product prepared in anticipation of litigation or are they deemed to be business records prepared in the ordinary course of business and discoverable?
It depends on the intent of the report. If the report was made with the intention to communicate it to counsel in intention of litigation then it can be protected. "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." Hawai'i Rules of Evidence Rule 503; see also Hawai'i Revised Statutes § 626-1.

But, statements given to an insurer in the course of an initial investigation before commencement of litigation and not requested by or taken under guidance of counsel are not protected by the attorney-client privilege and may be discovered. DiCenzo v. Izawa 723 P.2d 171, 176-177 (Haw. 1986).