

(2010) 08 MAD CK 0148

In the Madras High Court

Case No : C.M.A. No's. 3511 and 3512 of 2006

Jaya Chakrabarty and Shayan Chakrabarty rep. by his mother
and natural guardian

APPELLANT

Vs

M. Baskar, The Oriental Insurance Co. Ltd. and Lakshmi
Chakrabarty
Jaya Chakrabarty Vs M. Baskar and The
Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 158(6), 166(4), 170

Citation : (2011) 8 RCR(Civil) 2713

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, C.J.—Since all these five appeals arose out of a common judgment and award passed by Accident Claims Tribunal, Chennai,

they have been heard and disposed of by this common judgment.

2. C.M.A. No. 3511 of 2006 arose out of M.C.O.P. No. 1147 of 2003, in which compensation was claimed on account of death of one

Sumanta Chakrabarthi in a motor vehicle accident. C.M.A. No. 3512 of 2006 arose out of M.C.O.P. No. 1148 of 2003 in which case

compensation was claimed on account of the injury caused to the claimant/appellant namely., Jaya Chakrabarthi. C.M.A. No. 3513 of 2006 arose

out of M.C.O.P. No. 1149 of 2003 wherein compensation was claimed on account of the injuries sustained by the appellant in the motor vehicle

accident. C.M.A. No. 3514 of 2006 arose out of M.C.O.P. No. 5702 of 2003 in which compensation was claimed on account of death of one

Debashish Bhowmick in the said accident. C.M.A. No. 3515 of 2006 arose out of M.C.O.P. No. 5537 of 2003 in which case compensation was

claimed on account of the injuries sustained by the claimant/appellant in the said accident.

3. On 09th November, 2001, the deceased namely Sumanta Chakrabarthi along with this wife, son and also along with three others including the

other deceased Debashish Bhowmick were traveling in a car bearing Reg. No. TN-01-S-0204 from Chennai to Kanyakumari. The car was being

driven by the deceased Sumanta Chakrabarthi. When the car was nearing Koochikolathu Village, a tanker lorry bearing Reg. No. TN-02-L-

2225, allegedly driven in a rash and negligent speed, came from opposite direction and dashed against the car, as a result of which two persons

namely, Sumanta Chakrabarthi and Debashish Bhowmick died on the spot and the other claimants suffered serious injuries.

4. In C.M.A. No. 3511 of 2006 (M.C.O.P. No. 1147 of 2003), the claimants/appellants are the heirs and legal representatives of the deceased

Sumanta Chakrabarthi. The claimants' case was that the deceased, at the time of the accident, was aged 33 years. He was working as a

Manager-Financial Controller with M/s. CITI Bank, Chennai from where he resigned and was about to join as Senior Manager in Band V with

M/s. Standard Chartered Bank. At the time of the accident, the deceased was driving the car and the accident took place due to rash and

negligent driving of the tanker lorry. Hence, the claimants claimed compensation of Rs. 2,00,00,000/-, but restricted the claim to Rs. 10 lakhs.

5. In C.M.A. No. 3514 of 2006 (M.C.O.P. No. 5702 of 2003), the claimants/appellants are the heirs and legal representatives of the deceased

Debashish Bhowmick, who was one of the occupants of the car. He was aged 39 years and was employed as Manager in Tata Tea Limited,

Calcutta, and was earning Rs. 5,38,255/- per month. In the said claim petition, the claimants claimed compensation of Rs. 1,25,00,000/-.

6. In C.M.A. No. 3512 of 2006 (M.C.O.P. No. 1148 of 2003), the claimant, who had sustained injuries in the said accident, claimed

compensation of Rs. 9 lakhs. The claimant's case is that she along with her children and husband and three others were traveling in the car and

because of the said accident, she sustained fracture of shaft of right femur, fracture of shaft of left femur, fracture of lateral and medial wall of left

orbit and left maxillary sinus, lacerated wound over left eye brow and multiple injuries all over the body. Due to the said accident, she incurred

medical expenses, loss of income during treatment period, loss of earning power, pain and suffering and disability.

7. In C.M.A. No. 3513 of 2006 (M.C.O.P. No. 1149 of 2003), compensation amount of Rs. 2 lakhs was claimed for the injuries sustained to the

five year old child in the said accident. According to the claimant, the child sustained head injury, lacerated injury on the left side of the forehead,

superficial laceration over occipital region and multiple injuries. The claimant was initially treated in Government Hospital, Tindivanam and later on

shifted to Apollo Hospital, Chennai for further treatment. Due to the said accident, the claimant suffered medical expenses, pain and suffering and disability.

8. In C.M.A. No. 3515 of 2006 (M.C.O.P. No. 5537 of 2003) the claimant/appellant claimed compensation of Rs. 10 lakhs for the injuries

sustained by her in the said accident. According to the claimant, she sustained comminuted segmental fracture on right femur, comminuted fracture

on right humerus, compound comminuted fracture of lower end and right radius with intra-auricular extension and multiple injuries all over the

body. She was admitted in Tindivanam Government Hospital for first-aid and then shifted to Apollo Hospital, Chennai for further treatment. Due to

the said accident, the claimant allegedly incurred medical expenses, loss of income during treatment period, loss of earning power, etc.

9. In all these cases, the second respondent namely, the insurer of the tanker lorry i.e., Oriental Insurance Company Limited contested the case

and leave was also obtained u/s 170 of the Motor Vehicles Act. The said respondent denied the manner of the accident. It is stated that the Maruti

Car, which was driven by the deceased, was over-crowded with six members against its normal capacity. Hence, the driver of the car was not in a

position to control the car in a proper manner, as a result of which the accident occurred. It is, further, stated that the claim application is affected

for not impleading the insurer of the car. The further case of the respondent is that the deceased was guilty of contributory negligence. The

claimants failed to prove that the driver of the tanker lorry was not having valid driving licence on the date of the accident. The respondent's further

case is that the compensation claimed under the various heads, in all these cases, are excessive and exorbitant.

10. On the basis of the above pleadings, the Tribunal formulated the following points for consideration:

1. Whether the accident happened due to the rash and negligent driving of the driver of the tanker lorry bearing Reg. No. TN-20-L-2225?

2. What is the dependency for the claimants in M.C.O.P. No. 1147/2003?

3. What is the dependency for the claimants in M.C.O.P. No. 5702/2003?

4. What is the appropriate multiplier to be adopted to arrive the loss of dependency and the quantum of total compensation in M.C.O.P. No.

1147/2003?

5. What is the appropriate multiplier to be adopted to arrive the loss of dependency and the quantum of compensation in M.C.O.P. No.

5703/2003?

6. What is the compensation to be awarded for the petitioner in M.C.O.P. No. 1148/2003?

7. What is the compensation to be awarded for the petitioner in M.C.O.P. No. 1149/2003?

8. What is the compensation to be awarded for the petitioner in M.C.O.P. No. 5537/2003?

9. To what relief?

11. While deciding the issue on Point No. 1 as to whether the accident occurred due to the rash and negligent driving of the driver of the tanker

lorry, the Tribunal considered the evidence adduced by the parties, both oral and documentary, and came to the conclusion that the accident took

place due to contributory negligence on the part of the car driver and also negligence on the part of the driver of the tanker lorry. Hence, the

Tribunal held that the car driver was responsible for 50% contributory negligence. In arriving at such a conclusion, the Tribunal mainly relied upon

the evidence of P. Ws 1 and 2. The Tribunal noticed that the accident took place at about 6.30 a.m. and there was no sun light at that time.

P.W.1, who was one of the occupants of the car, deposed that there was a "U" turn in the place of the accident and there was no chance for both

the drivers to see the opposite coming vehicles. According to P.W.1, the car started at about 4.00 a.m. and covered about 100 kilometers within

two hours and thirty minutes. The Tribunal, therefore, arrived at a conclusion that the approximate speed of the car was 50 kilometers per hour. It

was also brought on record that on the basis of the FIR, a criminal case was also registered against the driver of the tanker lorry. On an analysis of

the evidence, the Tribunal arrived at a conclusion that the breadth of that road is about 15 feet and there is 10 feet mud road available on both

sides. P.W.2 has deposed that there is no chance for both drivers to see the opposite coming vehicles. On this basis, the Tribunal held that the

driver of the car is responsible for 50% contributory negligence.

12. In C.M.A. No. 3511 of 2006 (M.C.O.P. No. 1147 of 2003) the Tribunal found that the deceased Sumanta Chakrabarty received gross

salary of Rs. 62,880/-, as per the evidence of PW1, and a net salary of Rs. 55,139/- as per the pay slip for the month of October, 2001.

Subsequently, he died on 09.11.2001. As per Ex.P.86, which is a statement of account issued by the City Bank, a sum of Rs. 55,139/- was

credited as salary for the month of October, 2001. The Tribunal, therefore, deducted a sum of Rs. 15,416/- towards income tax and professional

tax out of Rs. 55,139/- and arrived monthly dependency at Rs. 39,723/-. The annual dependency was therefore assessed at Rs. 4,76,676/-.

However, the Tribunal assessed the loss of dependency at Rs. 3,99,692/- and took a multiplier of 5 taking into consideration the age of the

deceased and also the fact that the widow who is the first claimant is employed. After arriving some amount towards loss of consortium and loss of

love and affection the net amount of compensation fixed by the Tribunal was Rs. 20,33,460/-.

13. Since, the Tribunal fixed 50% negligence on the part of the deceased driver who was driving the car half of the amount was deducted and a

sum of Rs. 10,16,730/- was awarded as compensation to the claimants.

14. Learned Counsel appearing for the appellants assailed the impugned award as illegal and without jurisdiction, and further submitted that the

Tribunal has committed serious error of law and fact in holding the deceased driver of the car negligent while driving the car. The Learned Counsel

further submitted that the finding of the Tribunal holding 50% contributory negligence on the part of the driver is perverse in law. It is contended

that it was the driver of the lorry who was chargesheeted by the police and the

said driver latter committed suicide. Learned Counsel further submitted that the finding of the Tribunal that it was a head on collision of the two vehicles are equally against the report of the Motor Vehicle

Inspector, who clearly mentioned in his report that the right side of the car was ripped off and completely damaged.

15. We find force in the submission of the Learned Counsel for the appellants. From the investigation report Ex.R1 conducted by the Motor

Vehicles" Inspector it is evidently clear that the right side of the car was ripped off and completely damaged. It is significant to note that the

deceased Sumanta Chakrabarty, who was driving the car and another deceased Debashish Bhowmick, who was sitting just behind the driver on

the right side of the car died instantaneously on the spot, the moment the lorry coming in a very high speed dashed against the right side of the car.

The other occupants of the car who were sitting in the left side of the car only sustained injuries. We are, therefore, of the considered opinion that

the finding of the Tribunal about the Contributory Negligence of the driver of the car is absolutely erroneous both in law and fact, and the same

cannot be sustained.

16. On the question of quantum of compensation awarded by the Tribunal on account of death of Sumanta Chakrabarty in M.C.O.P. No. 1147 of

2003 is concerned, Learned Counsel for the appellants submitted that the deceased was working as Manager-Financial Controller with City Bank

and was drawing a salary of Rs. 62,880/- per month. He got employment with the Standard Chartered Bank as Senior Manager in Band-V and

the salary offered was Rs. 14 lakhs per annum and Rs. 3,60,00/- as H.R.A. The total emolument offered was Rs. 17,60,000/-. Learned Counsel

submitted that the deceased accepted the offer and was to join duty, but before that he died in the said accident. Admittedly, at the time of death

the income of the deceased was Rs. 2,74,858/- as per the income tax return for the year 2000-01 Ex.P-36. As per Ex.P-37 the income tax return

for the year 2001-02 the income shown as Rs. 2,25,815/- On a safer side, considering the age of the deceased the annual income can be taken as

Rs. 3 lakhs per annum. If we deduct 1/3rd out of the said income towards personal expenses the annual dependency comes to Rs. 2 lakhs per

annum.

17. Taking a maximum multiplier of 17 the net amount of compensation comes to Rs. 34 lakhs. In our considered opinion, therefore, a sum of Rs.

34 lakhs on account of death of Sumanta Chakrabarty shall be just and reasonable compensation. As we set aside the finding of the Tribunal with

regard to contributory negligence there shall not be any deduction out of the aforesaid amount of compensation i.e., Rs. 34 lakhs. The said amount

of compensation shall carry interest at the rate of 7.5% from the date of filing of the claim application. Hence, if the accrued interest from 2003 is

added, the net amount of compensation which the claimants will get exceeds more than Rs. 60 lakhs.

18. Learned Counsel appearing for the respondent/insurance - company, however, contended that the appellants/claimants before the Claims

Tribunals restricted their claims to Rs. 10 lakhs and paid court fee on that amount. Hence, unless an amendment petition praying for amendment to

the claim petition is filed and allowed by this Court the claimants/appellants are not entitled to higher compensation. In support of his contention the

Learned Counsel relied upon a decision of the Supreme Court in the case of Nagappa Vs. Gurudayal Singh and Others, . In our view the afore

said decision will not be of any help to the respondent - insurance company. In the said decision their Lordships held at paragraph 21 as follows:

21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation

amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just" compensation which is reasonable on the basis of

evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by

enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section 166, even

report submitted to the Claims Tribunal under Sub-section(6) of Section 158 can be treated as an application for compensation under the M.V.

Act. If required, in appropriate cases, court may permit amendment to the claim petition.

19. In the instant case, we found that the claimants/appellants claimed a total compensation of R.2 crores in the claim petition, but because of some

financial constraint they restricted their claim to Rs. 10 lakhs and paid court fee on that amount. While preferring the appeal the claimants paid

additional court fees on the amount of Rs. 1,90,00,000/- and claimed payment of higher compensation. In that view of the matter, since in the

claim petition a compensation of Rs. 2 crores has already been claimed the question of further amendment does not arise. Hence, in the appeal

stage this Court finds that on the basis of evidence and material on record the claimants were entitled to higher compensation when there is no bar

to enhance compensation amount which would be just and reasonable.

20. C.M.A. No. 3514 of 2006 arising out of M.C.O.P. No. 5702 of 2003:

As noticed above, in this case the claimants/appellants are the legal representatives of the deceased Debashish Bhowmick. According to the

claimants, he was aged 39 years at the time of his death and was employed as Manager in Tata Tea Company Limited and was receiving Rs.

4,71,305/- per annum. The claimant in this case claimed a sum of Rs. 1,25,00,000/- for the death of the deceased Debashish Bhowmick. In this

case the Tribunal awarded a compensation of Rs. 8,08,594/-. The issue with regard to the quantum of compensation claimed by the claimants of

this case has been discussed by the Tribunal in paragraphs 37 and 38 of the judgment, which are quoted herein below:

37. The first claimant was examined as P.W.2. She deposed that her husband died in the above road accident and Ex.P.41 is the post mortem

certificate. As per Ex.P.41, post mortem certificate, the age of the deceased is mentioned as 45 years. As per Ex.P.45 passport, the deceased

was born on 25.10.1962. Hence, the deceased was aged about 39 years. Ex.P.42 and Ex.P.43 prove that the claimants are the legal

representatives of the deceased. It is also proved by Ex.P.44 the birth certificate of the 2nd petitioner. P.W.2 further deposed that the deceased

was a B. Com. Graduate and also a Chartered Accountant. It is proved by Ex.P.46 to Ex.P.48. Ex.P.49 proves that he passed Management

Development Programme in September, 2000. She deposed that the deceased joined as Assistant Administrative Officer in National Insurance

Limited on 14.09.1997 and subsequently resigned on 13.04.2000. It is proved by Ex.P.50. Ex.P.51 to Ex.P.53 prove the further appointments of

the deceased. Finally he was employed in Tata Tea Company and Ex.P.55 Pay Slip for the month of September, 2000 proves the total

emoluments for the above month. As per Ex.P.56 pay slip for the month of

September, 2001 he was paid Rs. 40,595/- as net salary. Ex.P.58 and Ex.P.59 are the merit certificates given by the employer. As per Ex.P.60 the family of the deceased was paid a total sum of Rs. 72,986/- as merit bonus. As per Ex.P.61, the deceased was promoted as Manager - Insurance & Trust Funds and his salary was fixed at Rs. 14,400/- per month with perquisites. Ex.P.62 and Ex.P.63 are the income tax saral certificates for the assessment year 2000-2001 and 2001-2002. As per Ex.P.62 the annual income from 1.8.1999 to 31.3.2000 was Rs. 3,92,240/-. Rs. 90,817/- was deducted for income tax. It proves that the net income for the above assessment year was Rs. 3,01,423/-. As per Ex.P.64 Form No. 16 issued by the employer from April 2001 to March 2002, the gross salary was Rs. 4,71,305/- and Rs. 97,540/- was deducted as income tax. It was the income from 1.4.2001 to 9.11.2001.

38. P.W.2 deposed that the deceased was expecting his promotion as Deputy General Manager in the month of April, 2002 and in the above

post, there will be an increase of 100% salary. She deposed that he would have further service for about 19 years and he would retire as Senior

vice President and subsequently President. To prove the future prospects, the petitioners have not examined the employer. Regarding the future

promotions and future salary, she has not filed any guidelines issued by the above private limited company. However, considering the age and

employment, it will be reasonable that a minimum of 25% increase can be expected as future salary. Accordingly, the future salary would be Rs.

$3,01,423 \times 25/100 = \text{Rs. } 75,355 + 3,01,423 = \text{Rs. } 3,76,778$. the average of present and future salary is arrived as $\text{Rs. } 3,01,423 + 3,76,778 =$

$\text{Rs. } 6,78,201/2 = \text{Rs. } 3,39,100/-$. In the above income $1/3^{\text{rd}}$ Rs. 1,13,033/- is deducted for the personal expenses of the deceased and the loss of

dependency would be $\text{Rs. } 3,39,100 - 1,13,033 = \text{Rs. } 2,26,067/-$ per annum for the claimants in M.C.O.P. No. 5702 of 2003.

21. It is evidently clear from the aforesaid paragraphs that as per Ex.P-64 Form No. 16 issued by the employer from April 2001 to March 2002

the gross salary was Rs. 4,71,305/- and Rs. 97,540 was deducted as income tax. Hence, the net salary payable to the deceased was Rs.

$4,71,305 - 97,540 = 3,73,765/-$. The Tribunal after determining the annual dependency at Rs. 2,26,067/- multiplied the same by 7 years of

purchase and came to the net compensation of Rs. 16,17,189/-. After deducting 50% on account of driver's contributory negligence a sum of Rs.

8,08,594/- has been awarded. As discussed above, the finding of the Tribunal with regard to the contributory negligence cannot be sustainable in

law, and therefore, 50% of the amount of compensation cannot be deducted for the alleged contributory negligence. In this case also, the Tribunal

has committed error in law in taking the multiplier of 7 only for the purpose of assessing the compensation, when, admittedly, the deceased was 39

years old. In our view, a multiplier of 15 ought to have been taken for the purpose of assessing the amount of compensation. Hence, if the annual

dependency i.e., Rs. 2,26,067/- is multiplied by 15 years, the compensation amount comes to about Rs. 34 lakhs. We, therefore, hold that the

claimants-appellants are entitled to compensation of Rs. 34 lakhs, which shall be just and reasonable compensation.

22. C.M.A. No. 3512 of 2006 (M.C.O.P. No. 1148/2003)

In this case, the claimant/appellant was traveling along with her children. It is alleged that by reason of the accident, she sustained fracture of shaft

of right femur, fracture of shaft of left femur, fracture of lateral and medial wall of left orbit and left maxillary sinus, lacerated wound over the left

eye brow and multiple injuries all over the body. In her evidence, she deposed that for the bone fracture in the legs, she was operated and stainless

steel rods were fixed. Further surgery was done for her facial injuries. She filed Ex.P.29, Discharge Summary. On her behalf, P.W.3, Assistant

Professor in Surgery, Government Stanley Hospital, Chennai was examined, who deposed that she suffered permanent disability of 65% and

facing difficulty in walking, sitting and squatting. In the claim petition, the appellant claimed a sum of Rs. 2,12,910/- for loss of earning from

9.11.2001 to 30.06.2002. In support of that she filed leave certificate as Ex.P-38. in this case the claimant-appellant claims a compensation of Rs.

9 lakhs. The Tribunal discussed her evidence and held as follows:

Petitioner claimed Rs. 2,12,910/- for loss of earning from 9.11.2001 to 30.06.2002. As per Ex.P-38, leave certificate, she was on leave from

09.11.2001 to 30.06.2002. As per the decision of Division Bench of Hon''ble High Court, Madras in the case of B. Anandhi Vs. R. Latha and

Another, , an employee was entitled to get compensation for leave salary from

the respondent, even though the leave salary have been paid by the employer. The leave salary is not mentioned in Ex.P-38. As per Ex.P-37, the annual gross salary was shown as Rs. 2,25,815/-. As per Ex.P37,

the monthly gross income was Rs. $2,25,815/2 = \text{Rs},18,817/-$. For eight months on medical leave she is entitled for Rs. $18,817 \times 8 = \text{Rs}.$

1,50,536/-. The petitioner claimed Rs. 40,000/- for transport to hospital expenses. She has not filed any receipt for the travel expenses.

Considering the period of treatment at Chennai and at Calcutta, Rs. 5000/- is awarded for transport expenses. Considering the nature of injuries

and period of treatment, Rs. 10,000/- is awarded for extra nourishment charges. Rs. 1000/-- is awarded for damage to clothing. The petitioner

claimed Rs. 25,000/- for future medical expenses and it is not supported by the oral or documentary evidence. Hence, it is rejected. Rs. 5,000/- is

awarded for attendant charges. Considering the nature of injuries and period of treatment, Rs. 10,000/- is awarded for pain and suffering. The

petitioner is employed and she has to attend the domestic functions also. Considering the percentage of disability Rs. 20,000/- is awarded for loss

of amenities. In total, an award of Rs. 2,01,536/- is awarded as compensation for the injuries sustained by the petitioner. As already decided, the

accident occurred due to the 50% contributory negligence on the part of the deceased car driver. Hence, in the above compensation, the petitioner

is entitled for Rs. 1,00,768/- only for 50% of negligence on the part of the lorry driver.

23. Here also, the Tribunal has not correctly assessed the quantum of compensation. It has not been disputed that because of the nature of the

injuries, she was operated and stainless steel rods were fixed. She also suffered injury below her left eye brow and she was treated in Apollo

Hospitals from 9.11.2001 to 25.11.2001. It is also borne out from records that a surgery was also done for her facial injuries for which she filed

Ex.p-29, the Discharge Summary. Besides that she sustained bilateral fracture shaft femur and fracture lateral and medial wall of left orbit and left

maxillary sinus, for which she was treated and discharged from the hospital. In that view of the matter, for the injuries sustained by her, and for

suffering mental pain and agony, the compensation amount cannot and shall not be less than Rs. 5 lakhs. In our view, in this case, since the

appellant sustained grievous injuries, which resulted in 60% disability in walking, sitting and squatting, the appellant must be compensated by

reasonable amount of compensation for the sufferings and loss of employment also. We, therefore, hold that the appellant is entitled to lump sum

amount of compensation of Rs. 5 lakhs, which shall be just and reasonable.

24. C.M.A. No. 3513 of 2006 (M.C.O.P. No. 1149/2003)

In this case, the appellant aged 5 years old sustained injuries in the said accident. It is alleged that by reason of the said accident, the appellant

sustained head injury, lacerated injury on the left side of the forehead, superficial lacerated wound in the occipital region and hence, compensation

of Rs. 2 lakhs has been claimed for the injuries sustained by the child. On behalf of the minor son, her mother was examined, who deposed about

the injuries sustained in the said accident. The Tribunal considered the injury and the pain and mental agony suffered by the claimant and awarded

compensation of Rs. 16,000/-, out of which again 50% was deducted on account of contributory negligence. Here also, the compensation

assessed by the Tribunal is erroneous and unjustified. Although there is no sufficient evidence with regard to the nature of injuries sustained by the

appellant, who is a child, the claimant must be awarded compensation of Rs. 50,000/- which shall meet the ends of justice.

25. C.M.A. No. 3515 of 2006 (M.C.O.P. No. 5537 of 2003)

In this case, the appellant, who also sustained injuries in the said accident, claimed compensation of Rs. 10 lakhs. According to the

claimant/appellant, she suffered multiple fracture and multiple injuries all over the body. She was employed as a Supervisor in M/s. India Hotels

Company Limited, Calcutta and was earning Rs. 2,67,876.50/- per month and also House Rent Allowance. It is stated that she sustained

comminuted segmental fracture on right femur, comminuted fracture on right humerus, compound comminuted fracture of lower end and right

radius with intra-auricular extension and multiple injuries all over the body. She was admitted in Tindivanam Government Hospital and later shifted

to Apollo Hospital, Chennai and remained in treatment from 09.11.2001 to 14.11.2001. The case of the appellant is that because of the injuries

sustained by her, the movement of her right hand is restricted. She was treated for multiple fractures in the hand and a surgery was also conducted.

In support of her contention, she examined P.W.3, who is the Assistant Professor of Surgery, Government Stanley Hospital, Chennai, who

deposed to the effect that the appellant sustained 65% disability. The Tribunal assessed the compensation at Rs. 31,661/- by holding as follows:

Petitioner claimed compensation for loss of earning for the leave period from 9.11.2001 to 8.11.2002. She has not filed any leave salary issued by

the employer. However, considering the period of treatment, it will be reasonable to award one month salary for the same. As per Ex.P-69, the

total gross salary for the year 2001-2002 was Rs. 2,67,876.50/-. Accordingly, the monthly salary is arrived as Rs. $2,67,876/12 = \text{Rs. } 22,323/-$.

She is entitled for Rs. 22,323/- for loss of earning for a period of one month. Rs. 5000/- is awarded for transport to hospital expenses. Rs. 5000/-

for extra nourishment charges and Rs. 1000/- for damages to clothing. Since the employer has paid the medical expenses, she is not entitled to

claim the same. Rs. 10,000/- is awarded for pain and suffering and Rs. 20,000/- is awarded for loss of amenities due to 65% of permanent and

partial disability. In total, an award of Rs. 63,323/- is awarded as compensation for the injuries sustained by the petitioner in a road accident. In

the above compensation, the petitioner is entitled only Rs. 31,661/- as compensation for 50% contributory negligence on the part of the tanker

lorry driver, as already decided.

26. Here also, the Tribunal has not correctly assessed the quantum of compensation. It has not been disputed that because of the nature of the

injuries, surgery was also conducted. She also suffered dislocation on right clavicle, compound fracture of right humerus, compound and

comminuted fracture in right radius and radial nerve injury in right hand. She was operated for right femur bone. She was treated in Peerless

Hospital, Calcutta from 26.11.2001 to 29.08.2002. She also filed Ex.P-65, the Discharge Summary. Besides that she was treated for fracture of

right femur, fracture of right humerus and fracture of lower and right radius. Surgery was also conducted on 10.11.2001 and 13.11.2001 and

subsequently, discharged from the hospital. In that view of the matter, for the injuries sustained by her, and for suffering mental pain and agony, the

compensation amount cannot and shall not be less than Rs. 4 lakhs. In our view, in this case, since the appellant sustained grievous injuries, which

resulted in 65% disability in walking, sitting and squatting, the appellant must be compensated by reasonable amount of compensation for the

sufferings and loss of employment also. We, therefore, hold that the appellant is entitled to lump sum amount of compensation of Rs. 4 lakhs

(Rupees four lakhs), which shall be just and reasonable compensation.

27. Having regard to the facts and the evidence brought on record and the discussion made above, we, therefore, allow these appeals and enhance

the compensation amount as indicated herein above. However, there shall be no order as to costs.