

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th January, 2015

+ **MAC.APP. 498/2013**

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

RAM MANIK AND ORS

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of Rs.16,90,806/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 for having suffered injuries to his right leg in a motor vehicular accident which occurred on 02.05.2008 while Respondent no.1 was riding a cycle pursuing his vocation of selling cigarettes.
2. At the time of hearing of the appeal, following contentions were raised by the learned counsel for the Appellant Insurance Company:-
 - (i) Respondent no.1 claimed compensation of Rs.6,00,000/- but as against this, he was awarded a compensation of Rs.16,90,806/-;

- (ii) Respondent no.1 claimed his income to be Rs.6,000/- to Rs.7,000/- from selling cigarettes on a cycle. In the absence of any proof of income, his income ought to have been taken as per the minimum wages of an unskilled worker;
- (iii) The Claims Tribunal erred in making addition of 30% towards future prospects relying on the judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Limited & Ors. Civil Appeal No.3723/2012, decided on 23.04.2012*. It is urged that in view of the judgment of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65* such increase was not permissible; and
- (iv) The Claims Tribunal erred in taking loss of earning capacity as 100% through there was disability of only 62% in respect of right lower limb.

3. The minimum wages of an unskilled worker as on 02.05.2008 were Rs.3633/- per month. Respondent no.1's testimony that he was selling cigarettes on a cycle and that the accident took place while he was riding on a cycle for supplying his goods has not been challenged in cross-examination. Respondent no.1 could not have produced any documentary evidence regarding his income. The court was justified

in making guess work and accepting the income of Respondent no.1 from his vocation as Rs.6,000/- per month.

4. As stated earlier, Respondent no.1's job was to supply cigarettes to various shopkeepers and stall holders on his cycle.
5. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the distinction between permanent disability and functional disability resulting in loss of earning capacity. It was laid down that compensation on account of loss of earning capacity has to be granted in accordance with the nature of the job undertaken by the victim of the motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC

254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

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14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

6. Thus, while considering functional disability, the Court has to take into account the vocation of the injured/Claimant. The Court is further to consider whether the injured could follow an alternative vocation. Since Respondent no.1 was selling cigarettes on a cycle, his earning was substantially affected. But at the same time, Respondent no.1

would be able to follow the same vocation by purchasing a motorised tricycle or could follow some other vocation. In view of this, I am of the view that loss of functional disability in case of Respondent no.1 ought to have been taken as 60% instead of 100%.

7. The Claims Tribunal awarded enhancement of 30% towards future prospects on the basis of judgment of the Supreme Court in *Santosh Devi (supra)*. I have dealt with this aspect in great detail in *HDFC Ergo General Insurance Co Ltd. v. Smt Lalta Devi & Ors, MAC.APP. 189/2014, decided on 12.01.2015*. I had gone into the question whether increase of 30% or 50%, as the case may be, has to be given in case of the persons earning a fixed salary. I have held that the judgment in *Reshma Kumari & Ors. v. Madan Mohan & Anr. (2013) 9 SCC 65* shall be taken as a binding precedent. Paras 9 to 21 of the report in *Lalta Devi* are extracted hereunder:-

“9. The learned counsel for the Claimants has referred to a three Judge Bench decision of the Supreme Court in Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 to contend that the future prospects have to be added in all cases where a person is getting fixed wages or is a seasonal employee or is a student.

10. It is urged by the learned counsel for the Claimants that the law laid down in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 was extended in Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 to hold that future prospects ought to be extended in all cases.

11. On the other hand, the learned counsel for the Insurance Company refers to a three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 wherein while approving the ratio with regard to future prospects in *Sarla Verma (Smt.) & Ors. (supra)* and relying on *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176; *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179 and *Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr.*, 2003 (3) SCC 148, the Supreme Court held as under:-

“38. With regard to the addition to income for future prospects, in *Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002]*, this Court has noted the earlier decisions in *Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335]*, *Sarla Dixit [(1996) 3 SCC 179]* and *Abati Bezbaruah [Abati Bezbaruah v. Geological Survey of India, (2003) 3 SCC 148 : 2003 SCC (Cri) 746]* and in para 24 of the Report held as under: (*Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002]*, SCC p. 134)

“24. ... In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition,

where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”

39. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.”

12. The learned counsel for the Insurance Company relies upon a Constitutional Bench judgment of the

Supreme Court in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 673; Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94; and Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589 to contend that in case of divergence of opinion in judgments of benches of co-equal strength, earlier judgment will be taken as a binding precedent.

13. *It may be noted that in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65; the three Judge Bench was dealing with a reference made by a two Judge Bench (S.B. Sinha and Cyriac Joseph, J.J.). The two Hon'ble Judges wanted an authoritative pronouncement from a Larger Bench on the question of applicability of the multiplier and whether the inflation was built in the multiplier. The three Judge Bench approved the two Judge Bench decision of the Supreme Court in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 with regard to the selection of multiplier. It further laid down that addition towards future prospects to the extent of 50% of the actual salary shall be made towards future prospects when the deceased had a permanent job and was below 40 years and addition of 30% should be made if the age of the deceased was between 40-50 years. No addition towards future prospects shall be made where the deceased was self-employed or was getting a fixed salary without any provision of annual increment.*

14. *Of course, three Judge Bench of the Supreme Court in its later judgment in Rajesh relying on Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (6) SCC 421 observed that there would be addition of 30% and 50%, depending upon the age of the deceased, towards future prospects even in the case of self-employed persons. It may, however, be noted that in Rajesh, the three Judge Bench decision in Reshma Kumari (supra) was not brought to the notice of their Lordships.*

15. *The divergence of opinion was noted by another three Judge Bench of the Supreme Court in Sanjay*

Verma v. Haryana Roadways, (2014) 3 SCC 210. In paras 14 and 15, the Supreme Court observed as under:-

“14. Certain parallel developments will now have to be taken note of. In Reshma Kumari v. Madan Mohan [(2009) 13 SCC 422 : (2009) 5 SCC (Civ) 143 : (2010) 1 SCC (Cri) 1044] , a two-Judge Bench of this Court while considering the following questions took the view that the issue(s) needed resolution by a larger Bench: (SCC p. 425, para 10)

“(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?

(2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects?”

15. Answering the above reference a three-Judge Bench of this Court in Reshma Kumari v. Madan Mohan [(2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] (SCC p. 88, para 36) reiterated the view taken in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression “exceptional and extraordinary circumstances” is not capable of any precise definition, in Shakti Devi v. New India Insurance Co. Ltd. [(2010) 14 SCC 575 : (2012) 1 SCC (Civ) 766 : (2011) 3 SCC (Cri) 848] there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a

government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double the amount that the deceased was earning at the time of his death.”

16. *Further, the divergence of opinion in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65 and Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 was noticed by the Supreme Court in another latest judgment in National Insurance Company Ltd. v. Pushpa & Ors., CC No.8058/2014, decided on 02.07.2014 and in concluding paragraph while making reference to the Larger Bench, the Supreme Court held as under:-*

“Be it noted, though the decision in Reshma (supra) was rendered at earlier point of time, as is clear, the same has not been noticed in Rajesh (supra) and that is why divergent opinions have been expressed. We are of the considered opinion that as regards the manner of addition of income of future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench.”

17. *Now, the question is which of the judgments ought to be followed awaiting answer to the reference made by the Supreme Court in Pushpa & Ors. (supra).*

18. *In Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 673 in para 12, the Supreme Court observed as under:-*

“12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) [Ed.: Para 12(2) corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-3-2005.] A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) [Ed.: Para 12(3) corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question

dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh [(1989) 2 SCC 754] and Hansoli Devi [(2002) 7 SCC 273].”

19. Similarly, in *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC 94 in para 27, the Supreme Court observed as under:-

“27. However, even assuming that the decision in WP No. 35561 of 1998 did not operate as res judicata, we are constrained to observe that even if the learned Judges who decided WP No. 304 of 2001 did not agree with the view taken by a coordinate Bench of equal strength in the earlier WP No. 35561 of 1998 regarding the interpretation of Section 2(c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in overruling the statement of the law by a coordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench.”

20. In *Union of India & Ors. v. S.K. Kapoor*, (2011) 4 SCC 589 while holding that the decision of the Co-ordinate Bench is binding on the subsequent Bench of equal strength, held that the Bench of Co-ordinate strength can only make a reference to a larger Bench. In para 9 of the report, the Supreme Court held as under:-

“9. It may be noted that the decision in S.N. Narula case [(2011) 4 SCC 591] was prior to the decision in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] . It is well settled that if a

subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narula case [(2011) 4 SCC 591] was not noticed in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98], the latter decision is a judgment per incuriam. The decision in S.N. Narula case [(2011) 4 SCC 591] was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.”

21. *This Court in New India Assurance Co. Ltd. v. Harpal Singh & Ors., MAC APP.138/2011, decided on 06.09.2013, went into this question and held that in view of the report in S.K. Kapoor (supra), the three Judge Bench decision in Reshma Kumari & Ors. (surpa) shall be taken as a binding precedent.”*

8. Thus, addition of 30% towards future prospects was not permissible in the income of Respondent no.1.

9. As far as Appellant’s contention on grant of compensation more than what was claimed by Respondent no.1 is concerned, it is well settled that the duty of the Claims Tribunal and the Court is to award ‘*just compensation*’ and there is no bar to award compensation amount more than what is claimed by the victim. The issue was discussed by me in my judgment MAC.APP.629/2010 decided on 06.09.2012. Paras 13 to 19 of the judgment are extracted hereunder:

“13.The theory of not awarding compensation more than the amount claimed got a sea change with the judgment of the

Supreme Court in Nagappa v. Gurudayal Singh & Ors., (2003) 2 SCC 274, wherein the Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the Claimant. In an appropriate case where from the evidence brought on record if the Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. The Supreme Court said that the only embargo was; that it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable. Para 21 of the report is extracted hereunder:

“21. 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.”

14. In National Insurance Company Ltd. v. Rani, 2006 ACJ 1224, a Division Bench of Madras High Court held that without filing any Appeal or Cross-Objections, High Court is competent to enhance the compensation in favour of a victim of a motor vehicle accident by invoking provisions of Order XLI Rule 33 Code of Civil Procedure(Code). Para 16 of the report is extracted hereunder:

“16. At the risk of repetition it may be stated that the contention put forward is that the Court is duty bound to fix the just compensation. The fact that the Claimants have not filed any cross objection would not stand in the way and further the Court can by invoking the powers conferred under Order XLI Rule 33 of CPC, is satisfied, can enhance the compensation and call upon the Claimants to pay

necessary court fee. In that context, the learned counsel also submitted, when the Supreme Court has ruled that even at the appellate stage original petition can be amended claiming enhanced compensation, the Court enhancing compensation in the instant case, if satisfied, invoking powers under Order XLI, Rule 33 will certainly be in order.”

15. In Oriental Fire and General Insurance Co. Ltd. v. Amarsingh Pratapsingh Sikliker, 1(1993) ACC 627, a Division Bench of Gujarat High Court held that the Appellate Court was empowered to grant adequate compensation so as to do substantial justice between the parties even in absence of Cross-Objections or Appeal. Para 17 of the report is extracted hereunder:

“17. It becomes very clear from the aforesaid provisions that the appellate Court is empowered to grant adequate relief so as to do substantial justice between the parties even in absence of cross-objections or appeal....”

16. In Sone Ram v. Jayaprakash, AIR 1986 MP 21, the High Court of Madhya Pradesh exercising power under Order XLI Rule 33 of the Code enhanced the compensation granted by the Claims Tribunal even though no Appeal was preferred by the Claimant. In the case of Sewaram alias Sewan v. Nanhe Khan alias Asgar Beg, 1987 ACJ 354(MP), the High Court of Madhya Pradesh awarded 10% interest on the compensation amount in the absence of any Appeal or Cross-Objections by the Claimants.

17. A learned Single Judge of this Court in National Insurance Co. Ltd. v. Komal & Ors., MANU/DE/2870/2012, (MAC. APP. No.595/2007 decided on: 27.04.2012) referred to the judgments of the Supreme Court in Pannalal v. State of Bombay, AIR 1963 SC 1516; Rameshwar Prasad v. M/s Shyam Beharilal Jagannath, (1964) 3 SCR 549; Nirmal Bala Ghose v. Balai Chand Ghose, AIR 1965 SC 1874; Giasi Ram v. Ramjilal, AIR 1969 SC 1144; Harihar Prasad Singh v. Balmiki Prasad Singh, (1975) 2 SCR 932; Mahant Dhangir v. Madan Mohan, (1988) 1 SCR 679; State of Punjab v. Bakshish Singh, (1999) 8 SCC 222 and judgments of various High Courts to opine that the High Court is

empowered to enhance the compensation without filing any Appeal or Cross-Objections by a Claimant.

18. In Ibrahim v. Raju, AIR 2012 SC 534, a compensation of ₹3,00,000/- was claimed by the Appellant which resulted in an award of ₹60,000/- by the Claims Tribunal. The compensation was enhanced to ₹1,89,440/- by the High Court, which was enhanced to ₹6,00,000/- by the Supreme Court. Para 21 of the report is extracted hereunder:

*“21. We are conscious of the fact that in the petition filed by him, the Appellant had claimed compensation of Rs. 3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the Appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. **However, as the Tribunal and the High Court and for that reason this Court are duty bound to award just compensation,** (emphasis supplied) we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire, 1987 ACJ 311(Bombay), Orissa High Court in Mulla Mod. Abdul Wahid v. Abdul Rahim, 1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana, 1995 ACJ 1288 (P & H).”*

19. In New India Assurance Co. Ltd. v. Gopali & Ors., Civil Appeal No.5179 of 2012 (arising out of SLP (C) No.11345 of 2007) decided by the Supreme Court on 05.07.2012, the New India Assurance Co. Ltd. challenged an award of compensation of ₹6,45,300/-. The compensation was, however, enhanced to ₹10,63,040/- by the Supreme Court.”

10. As per section 166 (4) of the Motor Vehicles Act, 1988 (the M.V. Act), it is not mandatory for a victim to file a Claim Petition and the

Court can consider Accident Information Report forwarded under Section 158(6) of the M.V. Act as a petition for award of compensation.

11. In view of this, the impugned judgment cannot be faulted on the ground that compensation more than claimed was awarded.
12. I notice that Respondent no.1 has suffered multiple rib fractures B/L, cut hemopneumothorax B/L cut B/L SVP and pubic rami fracture and fracture both bones right leg resulting into 62% disability in respect of left lower limb.
13. In view of this, the loss of earning capacity comes to Rs.5,40,000/- (6,000/- x 12 x 1/2 x 15). The compensation thus, re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Treatment expenses	80,806/-	80,806/-
2.	Pain and sufferings	50,000/-	50,000/-
3.	Diet & conveyance	30,000/-	30,000/-
4.	Attendant's charges	15,000/-	15,000/-
5.	Loss of income	36,000/-	36,000/-
6.	Disability	14,04,000/-	5,40,000/-

7.	Loss of amenities/enjoyment of life & disfigurement	75,000/-	75,000/-
	Total	Rs.16,90,806/-	Rs.8,26,806/-

14. The overall compensation thus, comes to Rs.8,26,806/-. The overall compensation is reduced from Rs.16,90,806/- to Rs.8,26,806/-.
15. The excess compensation of Rs.8,64,000/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
16. The compensation awarded shall be released/held in fixed deposit in favour of Respondents no.1 as directed by the Claims Tribunal.
17. The statutory amount of ₹25,000/- shall also be refunded to the Appellant Insurance Company.
18. The appeal is allowed in above terms.
19. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 16, 2015

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