

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

Date of Decision: July 27, 2018

+ **MAC. APP. 81/2018**

BHOM SINGH AND ANR.Appellants

Through: Mr. V.N.Jha, Advocate

Versus

RELIANCE GENERAL INSURANCE COMPANY LTD AND
ANR.Respondents

Through: Mr. A.K.Soni & Mr. Pavan Kumar,
Advocates

+ **MAC. APP. 82/2018**

SUNITA DEVI AND ORS.Appellants

Through: Mr. V.N.Jha, Advocate

Versus

RELIANCE GENERAL INSURANCE COMPANY LTD AND
ANR.Respondents

Through: Mr. A.K.Soni & Mr. Pavan Kumar,
Advocates

+ **MAC. APP. 83/2018**

ISHWAR SINGH AND ANR.Appellants

Through: Mr. V.N.Jha, Advocate

Versus

RELIANCE GENERAL INSURANCE COMPANY LTD AND
ANR.Respondents

Through: Mr. A.K.Soni & Mr. Pavan Kumar,
Advocates

+ **MAC. APP. 84/2018**

BHOM SINGH AND ANR.Appellants

Through: Mr. V.N.Jha, Advocate

Versus

RELIANCE GENERAL INSURANCE COMPANY LTD AND
ANR.Respondents

Through: Mr. A.K.Soni & Mr. Pavan Kumar,
Advocates

+ **MAC. APP. 87/2018**

AJIT AND ANR.Appellants

Through: Mr. V.N.Jha, Advocate

Versus

RELIANCE GENERAL INSURANCE COMPANY LTD AND
ANR.Respondents

Through: Mr. A.K.Soni & Mr. Pavan Kumar,
Advocates

+ **MAC. APP. 90/2018**

VIDYA DEVI & ORS.Appellants

Through: Mr. V.N.Jha, Advocate

Versus

RELIANCE GENERAL INSURANCE COMPANY LTD AND
ANR.Respondents

Through: Mr. A.K.Soni & Mr. Pavan Kumar,
Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 7th October, 2017 passed by Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) grants compensation to appellants (*hereinafter referred to as the "Claimants"*) and other similarly placed claimants on account of death of 24 persons in a massive vehicular accident which took place on 1st August, 2010. In this unfortunate accident, *Kuldeep s/o Shamsher*, aged 24 years; *Varun s/o Bhom Singh*, aged 18 years; *Subhash s/o Bhoom Singh*, aged 21 years; *Sachin s/o Ajit*, aged 18 years; *Sunil Kumar s/o Ishwar Singh*, aged 20 years and *Satish s/o late Sh. Balwant*, aged 21 years, who were travelling in insured truck in question, had died. The above captioned appeals pertain to aforesaid deceased persons.

2. Despite service, the owner of the insured vehicle had neither contested before the Tribunal nor before this Court. It is informed that driver of the insured vehicle has already died.

3. Since these six appeals arise out of aforesaid common impugned Award, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

4. The factual background of this case, as noticed in the impugned Award, is as under:-

“2. Facts in brief as emerged from the claim suits are that on July 31, 2010 deceased persons, who were within the age of 18 to 25 years loaded their respective goods in the offending Truck bearing registration No. HR-55E-2307 to be transported to Gangotri, Uttarakhand from their village Baghanki, Manesar, District Gurugram, Haryana. The goods included bags of flour, rice, soozi, vegetable, utensils etc. for the purpose of holding ‘langar’ jointly by all the deceased persons for the pilgrims, who visit Holy Gangotri to distribute ambrosia among the pilgrims. The truck was hired by them and their co-villagers. It was alleged that they boarded the truck being the owners of the goods.

It was alleged that the truck was being driven by the driver, Dharambir Singh, at a fast speed in a rash and negligent manner. It was alleged that on August 1, 2010 at about 5:00 AM when truck reached near Durga Mandir, Dabrani Uttarakashi, Uttarakhand, driver lost control over the said truck, consequently, truck alongwith the goods fell into a ditch, resulting all the occupants of the truck including driver sustained fatal injuries.”

5. To render the impugned Award, the Tribunal has relied upon

evidence of Claimants/ legal heirs of deceased and other documentary evidence on record. The compensation awarded by the Tribunal to Claimants in these appeals, is as under:-

S.No.	Name of deceased	Compensation Awarded
1.	Kuldeep, s/o late Sh. Shamsher	₹10,90,100/-
2.	Varun Kumar, s/o Sh. Bhom Singh	₹7,58,500/-
3.	Subhash, s/o Sh. Bhoom Singh	₹11,64,000/-
4.	Sachin, s/o Sh. Ajit	₹6,10,100/-
5.	Sunil Kumar, s/o Ishwar Singh	₹6,10,100/-
6.	Satish, s/o late Sh. Balwant	₹9,95,100/-

6. Counsel for Claimants challenges the impugned Award on the ground that the deceased were not gratuitous passengers, as they were travelling in the insured vehicle as owner of the goods and the Tribunal has erred in treating them to be gratuitous passengers. Counsel for Claimants submits that even if it is taken that the deceased were gratuitous passengers, still the Insurer is liable to pay the awarded compensation and to recover it from the driver and owner of the vehicle in question. Enhancement of compensation is sought by counsel for claimants on the ground that the Tribunal has erred in not granting addition towards “*future prospects*” and in view of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, addition of 40% ought to be made. Reliance is also placed upon decision in *Shri Nagar Mal & Ors. Vs. The Oriental Insurance Company Ltd & Ors.* (2018) 3 SCC 130 in support of above submissions.

7. Counsel for Claimants further submits that in case of deceased-

Varun, the Tribunal has erred in assessing his “*loss of income*” because as per evidence of his father- *Bhom Singh (PW-1)*, he was a student of engineering college namely “*World College of Technology Management*” and in this regard, document *Ex.PW1/D6* was produced before the Tribunal. Attention of this Court is also drawn to the Senior Secondary Examination Certificate (*Ex. PW1/5*) to submit that he was a student and the Tribunal has erred in assessing income of deceased- *Varun* on minimum wages payable to an unskilled worker. So, it is submitted that income of deceased- *Varun* ought to have been assessed while treating him to be a Junior Engineer. In support of abovesaid submission, reliance is placed upon decision of a Coordinate Bench of this Court in *HDFC Egro General Insurance Co. Ltd. Vs. Smt. Lalta Devi* 2015 SCC OnLine Del 6505. Regarding deceased *Sachin* and *Sunil*, counsel for Claimants submits that they were matriculates and so, minimum wages payable to a matriculate ought to be the basis to assess their “*loss of income*”. Lastly, it is submitted by counsel for Claimants that applicable multiplier has to be according to the age of deceased and not Claimants, and the Tribunal has erred in not applying it. It is thus submitted that multiplier of 18 ought to be applied while assessing “*loss of dependency*” of deceased. Enhancement of compensation awarded, is sought by counsel for Claimants while relying upon decisions in *Manura Khatun & Ors. Vs. Rajesh Kumar Singh & Ors.* (2017) 4 SCC 796; *Manager, National Insurance Co. Ltd. Vs. Saju P. Paul & anr.* 2013 ACJ 554; *National Insurance Co. Ltd. Vs. Parvathneni* (2009) Law Suit SC 1502; *National Insurance Co. Ltd. Vs. Baljit Kaur & Ors.* (2004) 2 SCC 1

and *The New India Assurance Company Ltd. Vs. Darshana Devi & Ors.* JT 2008 (2) SC 430.

8. On the other hand, counsel for respondent- *Insurer* submits that the finding of deceased being gratuitous passengers returned by the Tribunal is borne out from the evidence on record and so, Insurer cannot be saddled with the liability to pay the compensation awarded and infact, the liability to pay compensation is of owner of the offending vehicle in question and so, the Tribunal ought to have granted recovery rights to Insurer *qua* the driver and owner of the insured vehicle. Counsel for Insurer also submits that the compensation granted under the “*non pecuniary heads*” is on the higher side. Hence, reduction of compensation awarded is sought by counsel for respondent-*Insurer*.

9. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that it is not the case of Claimants that deceased herein were travelling in the cabin of the insured vehicle. Supreme Court in *National Insurance Co. Ltd. Vs. Cholleti Bharatamma & Ors.* (2008) 1 SCC 423 has declared that the owner of the goods must travel in the cabin of the vehicle and not with the goods to claim protection under Section 147 of *The Motor Vehicle Act, 1988*. In the instant case, the deceased were not travelling in the cabin of the vehicle, therefore, the Tribunal has rightly concluded that the deceased were gratuitous passengers in the insured vehicle. Reliance has been placed by counsel for Insurer upon Coordinate Bench decisions of this Court in *Sanju Devi & ors. Vs. Ram Dhan Singh & Ors.*, 2016 SCC OnLine Del 342; *Bajaj Allianz Insurance Company Ltd., Vs. Shobha Devi & Ors.*

2012 SCC OnLine Del 1066; *Bajaj Allianz General Insurance Company Ltd. Vs. Lal Singh & Ors*, 2015 SCC OnLine Del 7508; *National Insurance Co. Ltd. Vs. Prem Prasad Bhandari & Ors.*, 2012 SCC OnLine Del 6062, wherein it has been held that when the deceased are found to be gratuitous passengers, then the Insurer cannot be saddled with the liability to pay the awarded compensation, but in a recent decision in *Manura Khatun* (Supra), Supreme Court has declared that in case of gratuitous passengers, it is duty of the Insurer to satisfy the Award first, while invoking the principal of “*pay and recover*”. The facts of the instant case persuade this Court to apply the principal of “*pay and recover*” and direct respondent-Insurer to pay the awarded compensation to Claimants and thereafter, recover it from the owner of insured vehicle. Driver of the insured vehicle is left out as during the course of hearing, it was brought to the notice of this Court that driver of the insured vehicle had died and no steps to bring on record his legal heirs have been taken.

10. So far as application of multiplier is concerned, in view of Supreme Court’s Constitution Bench decision in *Pranay Sethi* (Supra), the age of deceased has to be taken into consideration and not that of claimants and the Tribunal has erred in applying multiplier as per age of claimants. It has also been clarified by Supreme Court in *Anita & Ors. Vs. Arun Yadav & Ors.* 2017 SCC OnLine SC 1139 that addition towards “*future prospects*” has to be made in cases where deceased/ injured were drawing minimum wages. In the instant case, keeping in view the age of deceased, the applicable multiplier would be of 18 and addition of 40% has to be made towards “*future prospects*”.

11. As regards educational qualifications of deceased- *Varun and Sachin*, I find that reliance placed by Claimant's counsel upon decision in *Smt. Lalta Devi (supra)* is of no avail, as in said decision, income of a student, who had completed his course, was taken to be at the entry level for the job of a Junior Engineer. In the instant case, deceased – *Varun and Sachin* were studying and had not completed their course and so, assessment of income of deceased – *Varun and Sachin* on minimum wages is justified, as no witness has proved their educational certificates. However, in the case of deceased- *Varun, Sachin and Sunil*, the Tribunal has erred in applying minimum wages of an unskilled workman. Minimum wages payable to a matriculate have to be applied. At the relevant time, the minimum wages payable to a matriculate were ₹6,448/- and it has to be so applied in the case of deceased- *Varun, Sachin and Sunil*. The “*loss of dependency*” in case of deceased persons in question, is re-assessed as under:-

S.No.	Name of deceased	Loss of dependency	Total
1.	Varun	₹6,448/- X 12 X 18 X 50/100 X 140/100	₹9,74,937/-
2.	Sachin	₹6,448/- X 12 X 18 X 50/100 X 140/100	₹9,74,937/-
3.	Sunil	₹6,448/- X 12 X 18 X 50/100 X 140/100	₹9,74,937/-
4.	Kuldeep	₹5278 X 12 X 18 X 140/100 X 3/4	₹11,97,050/-
5.	Subhash	₹6,448/- X 12 X 18 X 140/100 X 2/3	₹12,99,916/-
6.	Satish	₹5,278/- X 12 X 18 X 140/100 X 2/3	₹10,64,044/-

12. As regards compensation granted under the ‘*non pecuniary heads*’,

the Tribunal has awarded to Claimants, compensation of ₹1,00,000/- each under the head of “*love and affection*”, “*funeral expenses*” of ₹25,000/- each and compensation of ₹10,000/- each under the head “*loss of estate*”. In addition, compensation of ₹1,00,000/- has been awarded under the head “*loss of consortium*” in the case of deceased-Kuldeep, Subhash & Satish. The compensation granted by the Tribunal under the *Non-pecuniary heads* has to be brought in tune with Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*. Accordingly, compensation granted by the Tribunal under the head of “*loss of love & affection*” is disallowed. The “*funeral expenses*” are reduced from ₹25,000/- to ₹15,000/- each and compensation under the head “*loss of estate*” is enhanced from ₹10,000/- to ₹15,000/- each. In the case of deceased-Kuldeep, Subhash & Satish, the compensation granted under the head “*loss of consortium*” is also reduced from ₹1,00,000/- to ₹40,000/- each. Consequentially, the compensation payable to Claimants is reassessed as under:-

Sl. No	Name of deceased	Loss of dependency	Loss of estate	Funeral expenses	Consortium	Total compensation payable
1.	Kuldeep	₹11,97,050	₹15,000/-	₹15,000/-	₹40,000/-	₹12,67,050/-
2.	Subhash	₹12,99,916/	₹15,000/-	₹15,000/-	₹40,000/-	₹13,69,916/-
3.	Satish	₹10,64,044/	₹15,000/-	₹15,000/-	₹40,000/-	₹11,34,044/-
4.	Varun	₹9,74,937/	₹15,000/-	₹15,000/-	Nil	₹10,04,937/-
5.	Sunil	₹9,74,937/	₹15,000/-	₹15,000/-	Nil	₹10,04,937/-
6.	Sachin	₹9,74,937/	₹15,000/-	₹15,000/-	Nil	₹10,04,937/-

13. In view of above, total compensation payable to legal heirs/Claimants of deceased-*Kuldeep* is enhanced from ₹10,90,100 to ₹12,67,050/- and in case of deceased- *Subhash*, it is enhanced from ₹11,64,000/- to ₹13,69,916/- and in case of deceased- *Satish*, it is enhanced from ₹9,95,100 to ₹11,34,044/- and in case of deceased- *Varun*, it is enhanced from ₹7,58,500/- to ₹10,04,937/-. The compensation awarded to legal heirs of deceased- *Sachin and Sunil*, is enhanced from ₹6,10,100/- to ₹10,04,937/- each. Respondent-*Insurer* is directed to deposit the enhanced compensation amount alongwith interest @ 9% *per annum* with the concerned Tribunal within six weeks. The modified compensation be released to Claimants in the ratio and manner, as indicated in the impugned Award.

14. With aforesaid directions, the above captioned six appeals are disposed of.

(SUNIL GAUR)
JUDGE

JULY 27, 2018

r