

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

Date of Decision: October 16, 2018

+ **MAC.APP. 302/2017**

YOGINDER SINGH & ANR.Appellants

Through: Mr. Ajay Singh and Mr. Pranay
Jain, Advocates

versus

SHANKAR YADAV & ORS.Respondents

Through: Mr. Parveen Kumar Mehdiratta,
Advocates for respondent No. 9

+ **MAC.APP. 231/2018**

YOGENDER SINGH & ANR.Appellants

Through: Mr. Ajay Singh and Mr. Pranay
Jain, Advocates

versus

MANJEET YADAV & ANR (THE NEW INDIA ASSURANCE
CO. LTD)Respondents

Through: Mr. Parveen Kumar Mehdiratta,
Advocates for respondent No. 2

+ **MAC.APP. 263/2018**

SHANKAR YADAV & ORS.Appellants

Through: Mr. Ajay Singh and Mr. Pranay
Jain, Advocates

versus

YOGINDER SINGH & ORS (THE NEW INDIA ASSURANCE
CO LTD).Respondents

Through: Mr. Parveen Kumar Mehdiratta,
Advocates for respondent No. 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned three appeals arise out of common impugned Award of 2nd May, 2015, vide which the Motor Accident Claims Tribunal (*henceforth referred to as 'the Tribunal'*) has awarded compensation of ₹7,84,000/- with interest @ 9% p.a. to Claimants on account of death of a Scrap Dealer (*Kabadi*)-*Kundan*, aged 24 years, in a vehicular accident, which took place in the night intervening 29th and 30th June, 2013.
2. In this accident, one *Manjeet* was also injured and the Tribunal vide impugned Award of 2nd May, 2015 has granted lump sum compensation of ₹15,000/- with interest @ 9% p.a. to him, which is also under challenge in the above-captioned appeals.
3. In the above-captioned first two appeals, owner and driver of Insured vehicle, i.e. Tractor, seek modification of the impugned Award on the ground that liability is of Insurer to pay the awarded compensation and reduction in the quantum of compensation awarded by the Tribunal. In the above-captioned third appeal, enhancement of compensation granted by the Tribunal to legal heirs of deceased is sought by Claimants/legal heirs of deceased-*Kundan*.
4. Since these three appeals arise out of one vehicular accident, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.
5. The factual background of this case, as noticed in the impugned

Award, is as under:-

"It is the case of petitioners that on 29/30.6.2013 at about 12.00 A.M (midnight) at Pakoda Park, Nasir Pur Road, Near New Bharti Public School, Sagar Pur, New Delhi, the deceased Shri Kundan Yadav along with Shri Manjeet was coming from Palam to Nasir Pur, New Delhi on motorcycle bearing No. DL-9SQ-5833 which was being driven by the deceased at the time of the accident. When they reached near Pakoda Park, Nasir Pur Road, in front of New Bharti School, Sagar Pur, New Delhi, suddenly the offending vehicle - a tractor attached with trolley containing bricks bearing No. HR-13D-7650, which was being driven by the respondent No.1 in a rash and negligent manner without following the traffic rules and byelaws, took a wrong turn and hit the motorcycle with force due to which the deceased came under the wheel of the offending vehicle and the pillion rider and motorcycle fell on the road. It is averred that the deceased was badly crushed under the offending vehicle and died on the spot. The pillion rider also sustained grievous injuries and the motorcycle of the deceased was also badly damaged. MLC No. 2295 dated 11th February, 2013 was prepared. It is stated that in respect of the accident FIR No.128/2013 under Sections 279/304A/337 IPC was registered at PS Sagarpur."

6. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/legal heirs of deceased and other evidence on record. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by the Tribunal to legal

heirs of deceased—*Kundan* is as under:-

1. Loss of dependency	:	₹6,49,000/-
2. Love and affection	:	₹1,00,000/-
3. Loss of estate	:	₹10,000/-
4. Funeral expenses	:	₹25,000/-
Total	:	<u>₹7,84,000/-</u>

7. The challenge to common impugned Award by learned counsel for owner of insured tractor is on the ground that insured tractor was being used to carry bricks for purpose of making a shelter in the field and was not being used for commercial purpose and so, there was no breach of terms and conditions of the Insurance Policy. So, it is submitted that the liability to pay the awarded compensation is of *The New India Assurance Company Limited (hereinafter referred to as 'Insurer')*. It is submitted that the quantum of compensation granted by the Tribunal is on higher side. It is next submitted that the deceased was driving the motor-cycle without headlights and so, the contribution of deceased in causing the accident was to the extent of 50% and therefore, the quantum of compensation granted by the Tribunal deserves to be suitably reduced.

8. On the contrary, counsel for Insurer supports the impugned Award and submits that the quantum of compensation granted by the Tribunal is adequate. However, legal heirs of deceased seek enhancement of compensation granted by the Tribunal on the ground that no addition towards '*future prospects*' has been made and the applicable multiplier ought to be as per age of deceased and not as per the age of mother. So, it is submitted that the quantum of compensation granted to legal heirs of deceased-*Kundan* deserves to be substantially enhanced.

9. Upon hearing and on perusal of impugned Award and the evidence on record, I find that as per *Policy Schedule-cum-Certificate of Insurance (Ex.PW1/4)* in respect of insured tractor in question reveals that the limitation to use the tractor as per this Insurance Policy is for all kinds of use, except organized racing, pace making, reliability trials and speed testing. So, it cannot be said that there was any conscious breach of terms and conditions of the Insurance Policy. In the considered opinion of this Court, the Tribunal has erred in putting the liability on the owner of insured tractor as the liability to pay the awarded compensation is of the Insurer. Since driver of the tractor has not stepped into the witness box to controvert the version put forth by the Claimants regarding the manner in which accident in question took place, therefore, there is no basis to hold that the instant case is of contributory negligence.

10. As regards the quantum of compensation granted by the Tribunal, I find that the Tribunal has erred in not making any addition towards '*future prospects*'. Since the deceased was aged 24 years on the day of the accident and his income is rightly assessed by the Tribunal on minimum wages payable to an unskilled worker, therefore, 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% towards '*future prospects*' is made.

11. The Tribunal has erred in applying the multiplier as per the age of mother of deceased. In view of Supreme Court's decision in *Pranay Sethi (Supra)*, the multiplier as per the age of deceased has to be applied. Thus, the applicable multiplier is of 18. Accordingly, the '*loss of dependency*' is

reassessed as under:-

$$\text{₹}7,722/- \times 12 \times 140/100 \times 50/100 \times 18 = \text{₹}11,67,566.40/-$$

(rounded off to ₹11,67,567/-)

12. The compensation granted by the Tribunal under '*non-pecuniary heads*' needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*. Accordingly, compensation granted by the Tribunal to legal heirs of deceased-*Kundan* under the head of '*loss of love & affection*' is disallowed. The '*funeral expenses*' are reduced from ₹25,000/- to ₹15,000/-. However, compensation granted under the head '*loss of estate*' is enhanced from ₹10,000/- to ₹15,000/-. Consequentially, the compensation payable to legal heirs of deceased-*Kundan* is reassessed as under:-

1. Loss of dependency	:	₹11,67,567/-
2. Loss of estate	:	₹15,000/-
3. Funeral expenses	:	<u>₹15,000/-</u>
Total:		<u>₹11,97,567/-</u>

13. In the light of aforesaid, total compensation payable to legal heirs of deceased-*Kundan* is enhanced from ₹7,84,000/- to ₹11,97,567/- which shall carry interest @ 9% per annum. The enhanced compensation alongwith interest be deposited within six weeks by Insurer with the Registrar General of this Court and thereafter, it be disbursed to legal heirs of deceased-*Kundan* in the ratio and manner, as indicated in the impugned Award.

14. So far as the compensation granted to Injured-*Manjeet* is concerned, I find it to be just and fair. As such, no case for its reduction is made out.

15. While modifying the impugned Award in the aforesaid terms, the above captioned three appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 16, 2018

v